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Calendar No. 467

97TH CONGRESS
2d Session

SENATE

REPORT
No. 97-329

FOREIGN MISSIONS ACT OF 1982

REPORT

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 854

TO PROMOTE THE ORDERLY CONDUCT OF INTERNATIONAL RELATIONS BY FACILITATING THE OPERATION OF FOREIGN MISSIONS IN THE UNITED STATES, THEREBY PROMOTING THE SECURE AND EFFICIENT OPERATION OF THE UNITED STATES MISSIONS ABROAD

together with

ADDITIONAL AND MINORITY VIEWS

APRIL 8, 1982.—Ordered to be printed
Filed under authority of the order of the Senate of April 1 (legislative day, February 22), 1982

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FOREIGN MISSIONS ACT OF 1982

APRIL 8, 1982.—Order to be printed
Filed under authority of the order of the Senate of April 1 (legislative day, February 22), 1982

Mr. ROTH, from the Committee on Governmental Affairs, submitted the following

REPORT

together with

ADDITIONAL AND MINORITY VIEWS

[To accompany S. 854]

The Committee on Governmental Affairs, to which was referred the bill (S. 854) as amended by the Foreign Relations Committee to promote the orderly conduct of international relations by facilitating the operation of foreign missions in the United States, thereby promoting the secure and efficient operation of United States missions abroad, having considered the same, reports favorably thereon as amended and recommends that the bill (as amended) do pass.

I. PURPOSE OF THE LEGISLATION

The purpose of S. 854 is to address a serious and growing imbalance between the treatment accorded in many countries to official missions of the United States, and that made available to foreign government missions in the United States. The bill creates within the Department of State an Office of Foreign Missions charged with the responsibility of assuring that treatment of United States missions abroad and the national security interests of our government within the United States are both taken into consideration when foreign governments seek to establish or operate missions with this country. As a result, the foreign governments represented by missions in the United States will have an incentive to provide fair, equitable and nondiscriminatory treatment to U.S. missions and personnel in their territory, thus contributing to significant savings in the costs of operating U.S. missions, improved working conditions for U.S. personnel, and mutual respect in

our foreign relations. The bill's authorities may also be applied to international organizations to the extent necessary to give effect to the policy of the bill.

While the ability to control the services provided to foreign missions within the United States is necessary for a policy of reciprocity, it is also essential that the Federal Government possess the authority and ability to carry out its international treaty obligations to facilitate the operation of foreign missions in the United States. Without this capability, the United States will find it difficult to insist on reciprocal treatment abroad. Therefore the bill creates mechanisms to assure that the substantial Federal interest in the location of foreign missions is weighed equally with municipal concerns.

II. Background

In an increasing number of countries, the United States is denied suitable locations for our missions or long-term rights to property or facilities, often resulting in diminished security, excessive or discriminatory costs, or inadequate facilities which significantly reduce the effectiveness of our missions.

In most cases, the Department lacks authority to impose similar restrictions or conditions on those or other countries in the United States. Instead it can only take far more extreme action such as barring the country concerned from using property it may acquire or declaring some persons persona non grata. These remedies are not suitable for such situations and are therefore rarely used.

The regulatory mechanisms contained in S. 854 are designed to provide the State Department with the leverage necessary to remove these unreasonable restraints and costs on U.S. missions abroad, and enhance national security domestically and overseas.

III. Major Provisions and Section-by-Section Analysis

SUMMARY

Specifically, S. 854 sets up an Office of Foreign Missions within the Department of State. The office is to be headed by a Director appointed by the Secretary of State. The Director will carry out his or her responsibilities under the general supervision and direction of the Secretary. The Secretary is prohibited from delegating supervisory authority over the Director to any official below the rank of Under Secretary.

This organizational structure seeks to reconcile two competing policy interests. On the one hand, the operation of foreign missions in the United States is an important aspect of the conduct of foreign affairs and should be directly under the supervision of the Secretary of State. On the other hand, responsibility for the hard decisions to deny or impose conditions on benefits desired by foreign missions should be somewhat insulated from the operating bureaus in the State Department which deal with foreign missions on substantive issues on a daily basis. These concerns will be met effectively by placing the responsibility in the State Department's Office of Foreign Missions

whose function will be to provide guidance on reciprocity and national security issues.

The Office will be staffed by Foreign Service officers, other government employees, experts and consultants as necessary.

The Secretary of State will set the terms and conditions under which benefits may be granted or denied a foreign mission. Such actions will be governed by the need for reciprocity or other factors in our relations with other nations. The purposes served include the following:

—facilitating relations between the United States and a sending State;

—protecting U.S. interests;

—adjusting for costs and procedures of obtaining benefits for missions of the United States abroad; and

—assisting in resolving disputes involving a foreign mission or sending State.

In carrying out the provisions of the bill, the Director is authorized to assist Federal, State and municipal governments with regard to ascertaining and according benefits, privileges and immunities to foreign missions. The activities covered include the execution or performance of any contract or agreement, the acquisition or retention of any real property, or the application for or acceptance of any benefit, including benefits from any Federal, State or municipal authority, or any entity providing public services (e.g., utility and telephone companies).

The bill specifically provides in section 204 that the terms and conditions set by the Secretary may include a requirement to pay the Director a surcharge or fee, which would be deposited in the working capital fund of the Department of State to be used in carrying out the provisions of the bill. In addition, the Secretary may require a waiver by any foreign mission of any recourse against any governmental authority, public service entity, agent or employee thereof, in connection with actions taken under the provisions of the bill. This will protect companies from lawsuits and will thus enable the Director to carry out the provisions of the bill more effectively.

SECTION 206

The bill also provides that issues concerning the location of foreign missions in the District of Columbia be settled by a newly created Foreign Missions Commission of the District of Columbia.

The Foreign Missions Commission is intended to assure that the Federal interest in the location of foreign missions is weighed along with local concerns in Washington, D.C. Currently, municipal decisions are taken without fully balancing foreign policy and national security questions. Consequently, the committee concluded that these concerns could be balanced best through the Foreign Missions Commission mechanism contained in section 206.

The Federal interest in the location, size, and operation of foreign government operations in this country stems from the Federal Government's constitutional responsibilities for foreign policy and the national defense. The Federal Government's interest is particularly

manifest in Washington, D.C., which, as the Nation's Capital, has special and unique obligations involving the Federal Government. Consequently, the rationale behind the mechanism in section 206 is not based on an analysis of particular cases. The need for Federal participation in decisions concerning foreign missions in the United States is fundamental because of the effect of those decisions on Federal responsibilities.

Chancery facilities of foreign governments accredited to the United States are special facilities, with security, communications and representation requirements that are very different than other types of institutional or office uses. Arrangements made for these governments in Washington directly affect U.S. interests abroad. The great majority of these government missions are relatively small in size, which together with the special security requirements involved often require location in low-density, mixed-use areas. They also need to be concentrated so that limited Federal protection resources can provide security. Because of the combination of these factors foreign missions impact on only a few areas of the District of Columbia.

Section 206, as reported by the committee, would permit these uses in mixed-use areas which already contain combinations of institutional, residential or commercial uses. Section 206 would not permit chancery locations in any area which is residential only.

While there is a need to assure that the Federal impact and national security concerns involved are part of the process, which is not now the case under municipal procedures, the proposed new District of Columbia Foreign Missions Commission would by statute apply all the normal criteria used in existing zoning procedures. The difference from present procedure is that Federal interests involving national security and reciprocity will be considered and the Federal impact weighed along with municipal concerns.

The Committee recognizes the legitimate concerns of Washington, D.C. residents about the location of foreign missions. The Committee stresses its intention that local concerns will remain an integral and substantial part of the considerations of the Foreign Missions Commission. To accommodate Home Rule concerns, the Committee accepts the compromise amendment of S. 854 as introduced creating the Foreign Missions Commission under the jurisdiction of the District of Columbia.

Participation by residents and neighborhood groups will be assured through rulemaking proceedings by the proposed Commission. Although hearings are not required, the Committee expects that they will be held to ensure adequate public participation. In addition, land use planning changes affecting international activity must also be reviewed by the National Capital Planning Commission.

LIMITED FEDERAL JURISDICTION

During the committee process a question was raised as to the effect of the section 207 preemption language on State or municipal land use processes, in connection with regulation of the location and size of the foreign missions. The committee agrees with an interpretation of the preemption language provided by Assistant Secretary Thomas M. Tracy in a letter to Chairman Roth.

U.S. DEPARTMENT OF STATE,
Washington, D.C., March 4, 1982.

Hon. WILLIAM V. ROTH.
Chairman, Governmental Affairs Committee, U.S. Senate.

DEAR MR. CHAIRMAN: In connection with consideration of S. 854, the proposed Foreign Missions Act now pending before the Governmental Affairs Committee, I would like to clarify the statutory intent of one provision of the bill, Section 207.

A question has been raised as to the effect of the Section 207 preemption language on state or municipal land use processes, in connection with regulation of the location and size of the foreign missions.

The answer clearly is that state and municipal authorities are not affected, with the exception that the Secretary of State under this bill may disqualify a foreign government from obtaining or retaining official facilities in any location in the United States. There are separate provisions relating to the District of Columbia because of the significant federal interest in the nation's capital.

The provisions of Section 207 require preemption only as to authorities set out in the Act itself. The only jurisdiction in which the Act provides authority for direct federal involvement in land use decisions is the nation's capital. Thus, if a foreign government is not disqualified under this Act from obtaining a location in any other jurisdiction, discretion as to land use decisions remain wholly within appropriate state or local authorities as to any particular location for a foreign mission.

If I can provide further information, please do not hesitate to call me.

Sincerely,

THOMAS M. TRACY,
Assistant Secretary of State for Administration.

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SECTION-BY-SECTION ANALYSIS

Section 1(a) designates the existing provisions of the State Department Basic Authorities Act of 1956 as "Title II—Basic Authorities Generally."

Section 1(b) provides for a new Title II of that Act to be designated "Authorities Relating to the Regulation of Foreign Missions." The remainder of Section 1(b) contains the text of a new Title II which consists of 12 sections:

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Section 201—Declaration of findings and policy

Section 201 sets forth congressional findings and policies concerning the operations, activities, and obligations of foreign missions in the United States, and the international legal obligation of nations to provide assistance to missions within their territories.

Section 201(a) restates the established jurisdiction of the Federal Government over the operation in the United States of foreign missions and public international organizations and official missions to such organizations.

Foreign mission activities in the United States are presently regulated in significant ways by treaties and other international obligations of the United States, such as the 1961 Vienna Convention on Diplomatic Relations. Certain mission activities are now subject to domestic regulation under existing Federal laws such as the 1978 Diplomatic Relations Act and the 1976 Foreign Sovereign Immunities Act. Foreign missions and their personnel are admitted into the United States only with the approval of the U.S. Government, and may be required at any time to depart the United States.

Thus, foreign missions and their personnel do not possess the status of private persons or organizations within the United States. In some cases their rights may be greater, and in some cases more limited.

The privileges of entry into the United States, and the authority to conduct activities in the United States, which clearly may be withheld altogether, will be subject to a wide range of conditions under this title. Such regulation of foreign missions is squarely within the foreign relations power of the United States and, therefore, a proper subject for Federal legislation.

Section 201(b) enunciates U.S. policy to support and facilitate the secure and efficient operation of U.S. missions abroad and of foreign missions and international organizations in the United States. It further declares U.S. policy to assist in obtaining appropriate benefits, privileges, and immunities for foreign missions and international organizations in the United States and to require them to observe corresponding obligations in accordance with international law. These statements reflect the purpose of this provision to authoritatively improve the ability of the Secretary of State to give effect to existing policy.

Section 201(c) mandates the consideration of benefits, privileges, and immunities accorded to U.S. missions abroad in determining the assistance to be accorded to foreign missions in the United States in the specific application of the general policy enunciated in subsection (b). This element of reciprocity, while not necessarily determinative in all cases, is a key feature of the system envisioned by this title. The concept requires the Secretary of State to be cognizant of the treatment of U.S. missions and personnel in foreign countries and to take that treatment into account in determining how foreign missions are to be treated in the United States. In making such determinations, the Secretary will also take into consideration national security concerns.

Section 202—Definitions

Section 202 defines terms used in the foreign missions title and specifies the role of the Secretary of State in determining their interpretation and applicability.

Subsection 202(a)(1) defines "benefit" to a foreign mission as any acquisition or authorization for an acquisition in the United States by or for a foreign mission, including such benefits as real property, public services, supplies, including maintenance and transportation, local staff, travel and related services, and protective services. It should be noted that this enumeration is merely illustrative and not exhaustive. In fact, this provision explicitly grants the Secretary of State authority to designate what constitutes a "benefit" for purposes of this title. The term "utility" should be broadly construed to include gas, electricity, oil, telephone or other communications facility or instrumentality, trash disposal, water and sewer services, and the like.

Section 202(a)(2) defines a "chancery" as the principal offices of a foreign mission used for diplomatic or related purposes (e.g., consular functions), as well as annexes, ancillary offices, support facilities, and any building site for such purposes. This means, for example, that buildings used only as residences by a foreign mission would not be included in the term "chancery." It is intended that the term be construed to include only those structures, facilities, and sites used by a foreign mission to conduct its business in the United States.

Section 202(a)(3) defines "Director" as the Director of the Office of Foreign Missions in the Department of State. That office is established under section 203(a) below.

Section 202(a)(4) defines a "foreign mission" as any official mission to the United States involving diplomatic, consular, or other governmental activities of a foreign government or another foreign organization (other than an international organization) which has been granted privileges and immunities under U.S. law. In addition to traditional diplomatic and consular establishments, this term includes such special missions as that of the Commission of the European Communities and diplomatic liaison offices which have been granted privileges and immunities pursuant to special legislation (22 U.S.C. 288h). It could also be applicable to state trading organizations operated by some governments, to the extent that the trading organization performs governmental functions. The term includes both the personnel and property of the mission.

Section 202(a)(5) defines the term "real property" to include any right, title, or interest in or to, or the beneficial use of, any real property in the United States. This would include situations where property has been acquired, for example, by a separate corporation controlled by a foreign mission, or by an organization which intends to make such property available for activities of a foreign mission. The term not only includes rights acquired by purchase, but also interests acquired by lease or otherwise.

Section 202(a)(6) defines "Secretary" to mean the Secretary of State.

Section 202(a)(7) defines "sending state" as the foreign government, territory, or political entity represented by a foreign mission. Similar terms are commonly used in international agreements concerning foreign missions, such as the 1961 Vienna Convention on Diplomatic Relations (23 U.S.T. 3227, TIAS 7502) and the 1963 Vienna Convention on Consular Relations (21 U.S.T. 77, TIAS 6820).

Section 202(a)(8) defines "United States" to mean the several States, the District of Columbia, the Commonwealth of Puerto Rico,

and the territories and possessions of the United States. This definition outlines the geographic application of the provision to make clear that it is intended to cover foreign missions situated in any such location and activities carried out in any such location.

Section 202(b) commits the interpretation and application of the terms defined in subsection (a) to the discretion of the Secretary of State. The provision is intended to avoid conflicting interpretations that might detract from the efficient implementation of this title or might adversely affect the management of foreign affairs. A determination, for example, as to what constitutes diplomatic, consular, or related official activity, may affect similar determinations by foreign states concerning functions of U.S. missions abroad. Such determinations might also affect implementation of multilateral treaties. Accordingly, they should not be left open to diverse interpretations under the foreign missions title. Nothing in this legislation would preclude appropriate judicial review of any action committed to the discretion of the Secretary.

Section 203—Office of Foreign Missions

Section 203 provides for establishment of a new office in the Department of State to administer the foreign missions provisions.

Section 203(a) directs the Secretary of State to establish the Office of Foreign Missions as an "Office" in the Department of State. This Office is to be headed by a Director appointed by the Secretary, who will perform under the Secretary's supervision and direction. The Secretary is prohibited from delegating supervisory authority over the Director to any official below the rank of Under Secretary.

This organization structure seeks to reconcile two competing policy interests. On the one hand, regulation of the operation of foreign missions in the United States is an important aspect of the conduct of foreign affairs and should be directly under the supervision of the Secretary of State. On the other hand, this responsibility should not be imposed on the operating bureaus in the State Department which deal with foreign missions on substantive issues on a day-to-day basis. These concerns will be met effectively by placing responsibility in a separate office within the State Department.

Guidance as to reciprocity and national security issues will be provided by the Office of Foreign Missions. The Office of Protocol will continue to perform its traditional functions involving relationships with and assistance to all foreign missions in the United States. In matters involving significant reciprocity considerations, guidance will be provided by the Office of Foreign Missions and steps necessary to assure equality of treatment will be taken by that office after consultation with the Office of Protocol, appropriate regional bureaus, and agencies charged with promoting and protecting our national security. The committee believes that this management concept will assure effective administration of the purposes and intent of this legislation.

Section 203(b) identifies the major responsibilities that the Secretary may delegate to the Director, and authorizes the Secretary to assign other functions to the Director as the Secretary may determine necessary in furtherance of the policy of the foreign missions provision.

Section 204—Provision of benefits

Section 204 contains the key provisions empowering the Secretary of State to implement the policy of the foreign missions provision by setting terms and conditions upon which benefits may be provided for any foreign mission. Additional specific authority to impose conditions on or to regulate the acquisition or use of real property is set forth in section 205 below.

Section 204(a) specifically provides authority for the Director to assist foreign missions, at their request, to obtain benefits. The Secretary of State may approve terms and conditions for such benefits.

The committee notes that this authority is intended both to enable the United States to exercise more effective control over the granting of privileges, immunities, and other benefits to foreign missions and to enhance the ability of foreign missions to conduct their representational duties in the United States.

Section 204(b) authorizes the Secretary to require a foreign mission to comply with such terms as the Secretary may establish in order to obtain or utilize any benefits or to take certain other actions. In addition, this subsection empowers the Secretary to require a foreign mission to obtain benefits from or through the Office of Foreign Missions. The Secretary is authorized to impose substantive and procedural constraints on the basis of reciprocity or otherwise, in accordance with the criteria set forth in paragraphs (1) through (4) of this subsection. These criteria include such matters as facilitating U.S. diplomatic relations, protecting the interests of the United States, assisting in the resolution of disputes affecting U.S. interests, or adjusting for costs and procedures imposed on missions of the United States abroad.

Section 204(c) sets forth certain conditions which the Secretary may impose on foreign missions in order for them to obtain benefits. Section 204(c)(1) provides that a requirement may be imposed for a surcharge to be paid to the Director by a foreign mission for the receipt of any specified benefit, regardless from whom the benefit is obtained. This provision will enable the United States to adjust for the often arbitrary imposition of costs overseas, or to provide leverage in cases where exact reciprocity may not be available, or may be insufficient to induce appropriate treatment of U.S. interests abroad. The surcharge would be paid directly to the Office of Foreign Missions, over and above any other costs or conditions set by any contractor or other party with whom the foreign mission is involved in acquiring the benefit in question. Payment of the surcharge could be a condition precedent for the mission to be allowed to obtain or retain specified benefits from private or public sources. Thus, there would generally not be any direct effect on the terms or conditions set in private contracts or by persons providing benefits to such missions.

Section 204(c)(2) provides for a waiver of recourse by a foreign mission generally against any governmental authority, entity providing public services, or other person in connection with any action (including an omission) determined by the Secretary to be in furtherance of the purposes of the title. In the absence of such a provision, public agency officials, private party contractors, or persons acting for publicly regulated utilities, among others, could be ex-

posed to suits challenging their authority to carry out such actions, or to suits for damages for complying with a requirement of the Secretary under the foreign missions title. Section 208(b), discussed below, provides further protection against suit in this regard.

Section 204(d) provides that the Secretary may designate the Director of the Office of Foreign Missions, or any other officer of the Department of State, as the agent of a foreign mission for the purpose of executing the required waiver. This authority is necessary to assure that the U.S. person acting in response to the Secretary's direction will not incur liability to a foreign mission.

Subsection (f) was added to section 204 during Senate Foreign Relations Committee mark-up at the request of the Department of the Treasury to accommodate the needs of the Secret Service. The concept of providing benefits on the basis of reciprocity does not extend to those protective services provided by the U.S. Secret Service under the authority of Section 202 of Title 3, United States Code, with respect to foreign diplomatic missions, or under the authority of Section 3056 of Title 18, U.S. Code, with respect to a visiting head of a foreign state or government or certain distinguished foreign visitors. This subsection makes it clear that it is not the intent of this legislation to impact upon or change in any way the authority or procedures of the U.S. Secret Service. Nor is it the intent of this legislation to influence the policy of the U.S. Secret Service to provide protection at a level which is commensurate with protective requirements.

The Secret Service is one federal agency charged with protecting foreign governments property in the U.S. National security concerns for providing such security must be factored into locational decisions very early in the process.

The Committee encourages the Department of State and the Office of Foreign Missions to promptly inform the Secret Service of the intentions of foreign governments for chancery space, once those intentions are made known to the Department.

The Committee believes the Office of Foreign Missions established in Section 203 should work closely with the Secret Service and other appropriate agencies to assure that foreign missions are adequately protected and that the security concerns of the Secret Service about chancery locations be taken into account at an early point in the process of determining terms or conditions for a foreign government.

Section 205—Property of foreign missions

Section 205 recognizes that the location and use of foreign mission facilities in the United States and the process by which those facilities are obtained, clearly affect the Federal interest, and have a direct impact on the security and adequacy of treatment of U.S. mission abroad.

Section 205(a)(1) authorizes the Secretary to require that a foreign mission provide notice prior to any acquisition, alteration, sale, or other disposition of any real property (as defined in sec. 202(a)(5)). The notice requirement could cover any beneficial usage of property, regardless of the means by which such right of usage is acquired, or whether acquired by the mission directly or by an employee or agent thereof, or by a third party. The Secretary then has 60 days within which to disapprove the proposed action and may establish conditions

which, if met, will remove the disapproval. The Secretary may as a discretionary matter, shorten the 60-day period.

This procedure precedes any further approvals which may be necessary from State or municipal authorities. The committee notes that this review procedure will be useful to State and municipal authorities as an additional indication of the acceptability of the proposed action. In view of the significant Federal interest involved, section 206 further governs the process by which location approvals are made in the Nation's capital.

Section 205(a)(2) defines acquisition for purposes of the section to include any action relating to real property such as acquisitions, alterations, additions, or changes in the purpose for which the property is used.

Section 205(b) authorizes the Secretary to restrict a foreign mission from using, or retaining, real property interests which are not acquired in accordance with this section, or which exceed limitations placed on real property available to the United States abroad. This subsection, together with section 204, is designed to provide necessary discretion for the Secretary to adjust enforcement provisions in order to take into account the many differing legal and political systems in other countries, as well as the necessary flexibility to take into account treatment accorded U.S. missions and personnel on related bilateral issues as well as national security concerns. In many countries, for example, foreign governments are not able to acquire title to property. The United States in such a case could obtain sufficient long-term lease rights for U.S. mission facilities in exchange for permitting the acquisition of property in the United States. Alternatively, the Secretary could require a foreign mission to limit its property interests in the United States to a specific term of years, or in some cases provide a right of reversion to the United States of such property, in the event that U.S. property rights or interests in the sending state were reduced or rendered less effective by acts or omissions of that state.

The enforcement provisions of this section which may be applied against the foreign mission include the divesting of property or foregoing use of the property. The inclusion of specific enforcement provisions in this section, as compared with the general authority to impose conditions on foreign governments under section 204, is intended to assure that State and local real property laws not be construed to accord procedural or substantive rights which preclude implementation of the foreign missions title.

Section 205(c) is designed to assure that the Federal Government will be able to protect and preserve property of foreign governments under circumstances when a protecting power or other agent does not assume responsibility. In addition, this subsection authorizes the Secretary to dispose of such property after the expiration of a 1-year period from the date such foreign mission has ceased using the property for official activities. The right of disposition is intended to be exercised only in unusual cases where resumption of official activities is not likely to occur within a reasonable period of time, or where, for other reasons, the Secretary determines that it is not in the Federal interest to continue to preserve such property. Considerations such as the status of U.S. property interests in the country involved might also enter into such determinations.

Section 206—Location of foreign missions in the District of Columbia

Section 206 provides that issues concerning the location of foreign missions in the District of Columbia will be settled by a newly created District of Columbia Foreign Missions Commission, on which the Federal and municipal interests are balanced. The procedures set forth in this section insure that all interested parties will be involved in the decisionmaking process, and that a proper balancing of interests will occur. The committee recognizes the concerns which have been expressed regarding the peculiar impact that foreign chanceries have on both the District of Columbia as well as national security.

Section 206(a) recognizes that the location of foreign missions in the Nation's capital, and the procedures involved in determining these locations, have a substantial impact on Federal interests both here and abroad.

Chanceries are the primary representational and functional offices of sovereign states accredited to the United States, which are required to be located in the capital city. Chanceries are inviolable, perform government functions requiring special communications and security, and are entitled to special protection by virtue of treaty obligations.

The United States Government has an international obligation to facilitate the acquisition of acceptable and secure chancery locations in the capital city, which is directly related to reciprocal treatment of United States missions abroad, as well as to national security concerns here.

Furthermore, national security issues are often involved both in the United States and overseas, so a procedure wherein the Federal interest is properly balanced with community impact is an important element of this title. This section therefore places the authority to determine the location of foreign missions in the capital with the District of Columbia Foreign Missions Commission. The subsection applies only to that real property of a foreign mission which is used by the mission to carry out diplomatic, consular, or other governmental acitivities of the foreign mission. Real property which is held by a foreign mission, but is not used for the above-stated purposes, such as commercial holdings, would not be subject to the requirements of this section.

Section 206 is intended to advance Federal as well as municipal concerns in the following key areas:

(1) Criteria for approving foreign mission locations which achieve a proper balancing of important federal and municipal concerns;

(2) A decisional body which in its composition reflects both Federal and municipal concerns relevant to the issue in Section 206;

(3) Procedures which are both expeditious and compatible with the conduct of our Nation's official relations between sovereign countries; and

(4) Availability of lower and medium density mixed-use areas for chancery use.

Section 206(b)(1) creates a new District of Columbia Foreign Missions Commission. The composition of the proposed new Foreign Missions Commission of the District of Columbia would result in a 7-person commission, composed of the 5 present members of the Dis-

trict Zoning Commission, plus 2 new Federal appointees, one of whom would be the chairperson of the National Capital Planning Commission (NCPC). This results in 3 Federal agency representatives, 3 appointees of the Mayor, and the Architect of the Capitol, who is currently an ex-officio member of the Zoning Commission and who would be in a position to represent the views of Congress.

Section 206(b)(2) provides for appropriate compensation for the Chairman of the National Capital Planning Commission during the period that individual is performing his or her duties on the Commission. The other members of the Commission are appointees either of the District of Columbia or employees of the Federal government and therefore receive no additional compensation.

Section 206(b)(3) provides that personnel, space, and facilities will be provided by the District of Columbia Government, as the Commission is a District of Columbia Government agency.

Section 206(c) requires establishment of areas within the District of Columbia in which chanceries may be located as a matter of rights, as is the case with many uses in current zoning practice. Security, representation and related factors necessitate that chancery uses be located in lesser density areas and generally in proximity to each other where possible. Security and representational functions also preclude in most cases general usage of higher density structures, such as office buildings, except for additional space needed from time to time to accommodate official activities which cannot fit into the main chancery facilities. It should be noted that areas devoted to higher density commercial or residential uses are in most cases inappropriate for low density chancery uses, and are well beyond the financial reach of 85 percent of the foreign nations accredited to the United Sates, and from whom the United States must seek appropriate space within their capitals.

Section 206(c) also specifically precludes discriminatory treatment of chanceries vis-a-vis other non-residential uses, by prohibiting limitations on chancery uses which are greater than those placed on other non-residential uses. For example, existing regulations in some cases preclude chancery uses while at the same time permitting all other office uses to locate as a matter of right without exception or limitation.

Section 206(d) requires that rulemaking procedures under the District of Columbia Administrative Procedure Act will be applicable to such determinations in a manner consistent with this Act. Among other things, this insures notice and opportunity to comment for interested members of the public. While public hearings are not required, the committee expects that they will be held when necessary to insure adequate public comment.

Section 206(e) sets forth the criteria to be applied to determinations by the Foreign Missions Commission.

The Commission will be authorized to and is expected to require hearings that will allow all interested parties, public and private, including neighborhood associations, to present their views. In addition, the committee notes that similar hearings have been held by the National Capital Planning Commission, in connection with proposed modifications to the Comprehensive Plan.

The committee notes that chancery facilities are in most cases lower density land uses, which for security and representational purposes are normally required to be located in separate and individually controlled

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structures. Larger commercial office structures are in many cases unacceptable for security and related reasons. Federal security requirements have also increased the need to concentrate these uses in areas in which they are already in place. It is, therefore, the purpose of this section to avoid the following regulatory actions which have failed to accommodate Federal as well as local concerns.

Chanceries are now less favorably treated under District regulations in comparison to other permitted institutional or commercial uses in almost all zones, except for high density commercial or residential zones which are often unacceptable for security reasons. For example, in the lesser density commercial districts, which may be most suitable for smaller chancery uses, over 50 stated uses are permitted as a matter of right, including all office uses with the single exception of chanceries. In districts of slightly higher density a substantially wider list of uses is again permitted as a matter of right, including all office uses, but chancery users are required to undergo a special exception type procedure, which effectively makes chanceries a disfavored use.

The only areas chanceries are allowed as a matter of right are the higher density "C" or other districts permitting high density development, which are in many cases inappropriate for chancery use.

In the same manner chanceries are a disfavored use in all "R" districts where they are technically permitted. In all "R" districts permitting chanceries, other non-residential uses may be allowed as a matter of right, whereas chanceries again must undergo a special exception type of procedure.

The overlay Diplomatic "D" zones failed to provide for matter of right location as required by the Foreign Missions Element of the Comprehensive Plan issued by the National Capital Planning Commission.

Paragraphs (1) through (8) of subsection (e) set forth the criteria applicable to chanceries and chancery annexes which are intended to balance Federal and municipal interests. These criteria take into account the Federal interest, which involves international obligations of the United States and the accompanying security requirements involved as well as concern for the impact on local matters such as transportation, housing, and environment.

Subsection (e)(1) sets forth the standard of "adequate and secure facilities" which reflects one of the fundamental purposes of the Office of Foreign Missions and the international obligations of the United States.

Subsection (e)(2) reflects the need to continue to locate such missions in existing mixed-used areas, in which current uses already include institutions, commercial, or governmental activities, and residential uses. The obligation to provide security for foreign missions dictates the need to locate these missions in proximity to each other and in areas of lesser density. The committee notes that areas in which the Foreign Missions Commission determines current uses are entirely residential would not become available for chancery use under this amendment, except for medium-high density or high-density apartment zones.

Section 206(e)(3) assures the continued application of historical preservation measures to facilities of foreign missions under regulations issued by the new Commission.

Sections 206(b)(4) through (6) relate to transit, parking, public facilities and services, and special security requirements. Section 206 (b)(4) also constitutes a recognition that special security factors affect parking requirements, and that similar considerations are taken into account in connection with the location of United States facilities abroad.

Sections 206(b)(7) and (8) specifically provide for determinations of the general municipal and Federal interests by the Mayor of the District of Columbia and the Secretary of State, respectively. Finally, the Commission is required to apply the criteria of Federal and municipal interests, historical preservation, the need for adequate and secure facilities, and adequacy of protection to other official property uses by foreign governments covered by this section.

Section 206(f) is intended to preserve the existing relationship between the National Capital Planning Commission and municipal authorities with regard to land use.

Section 206(h) is intended to assure that chancery applicants are not subjected to a process inconsistent with the conduct of official relations between nations.

Section 206(i) is intended to assure the establishment of an expeditious decisionmaking process, which will preclude overlapping and time-consuming proceedings which can result under existing law and regulations. It also emphasizes the Congressional purpose in enacting this section to assure proper facilities for foreign governments consistent with international obligations.

Section 206(j) places an obligation on the Secretary to promote compliance with reasonable code requirements, taking into account special security, communications and other factors involved in foreign government facilities in the United States, as well as with United States facilities abroad.

Section 206(k) is intended to clarify the right of the United States to intervene or bring an action concerning the activities of the new Commission, either on its own behalf or on behalf of a foreign government.

Section 206(l) provides "grandfather" rights with regard to existing chancery locations or uses. This subsection is necessary to protect rights and uses which were acquired prior to enactment of this section.

Section 206 establishes procedures and regulatory guidelines which provide a proper balance of Federal and local interests with respect to the location of foreign missions in the District of Columbia. This is necessary in order for the Federal Government to comply with its international obligations, and to assure that the local process accords due respect to the Federal impact of its decision.

The original section 206 as introduced in S. 854 and the House-passed amendment to S. 1193, the State Department authorization bill, had proposed to place authority for such decisions in a quasi-federal agency, the National Capital Planning Commission (NCPC), which has substantial city representation on it. As a result of concern expressed by the city, a compromise section 206 was worked out between the House District of Columbia and the Foreign Affairs Committees. It should be noted that this compromise was arrived at in consultation with representatives of the D.C. Government and the Department of State. However the D.C. Government has not agreed to support this

compromise. The new section which was adopted by the House of Representatives in H.R. 4814 and by the Senate Foreign Relations Committee leaves jurisdiction in the District of Columbia, which is the principal home-rule issue, and sets up statutory criteria and procedures for the decisional process, which balances Federal as well as local interests.

If important Federal concerns are not a significant part of the process in which the foreign government chanceries are located within the capital, the United States will find it difficult to insist on reciprocal treatment abroad. The City of Washington, remains the Federal capital of our government, and there are obligations local officials must assume as a result which involve accommodating various Federal responsibilities in the capital. Anything less will undermine the Congressional purpose of this legislation.

Section 207 declares that no State, Federal or municipal law shall be effective to confer or deny benefits to a foreign mission if such law is inconsistent with the authority granted by this title. With respect to all jurisdictions outside the District of Columbia, this legislation is intended to grant the Director of the Office of Foreign Missions a "veto power" over the location of foreign missions outside of the District of Columbia. The Secretary could prohibit a foreign nation from acquiring or utilizing real property in such a jurisdiction or place conditions on the use of such property.

However, it is not the intent of Section 207 to authorize the Secretary of State to in any way alter or amend state or municipal laws and ordinances, including land use or other regulations. Therefore, the authority granted to the Director of the Office of Foreign Missions to "assist agencies of Federal, State and municipal government with regard to ascertaining and according benefits, privileges and immunities to which a foreign missionary be entitled" under section 203(b)(1) is strictly advisory.

A letter to the committee from Thomas M. Tracy, Assistant Secretary of State for Administration, describes the Administration's view of the intent of this Section:

> A question has been raised as to the effect of the Section 207 preemption language on state or municipal land use processes, in connection with regulation of the location and size of the foreign missions.
>
> The answer clearly is that state and municipal authorities are not affected, with the exception that the Secretary of State under this bill may disqualify a foreign government from obtaining or retaining official facilities in any location in the United States. There are separate provisions relating to the District of Columbia because of the significant federal interest in the nation's capital.

During the discussion of S. 854, there was a great deal of concern on the part of some committee members that the interpretation of the intent of Section 207 as outlined by Mr. Tracy is not reflected in the actual language of the Section. The language of the Section specifically says that "no act" of any State or local government can be enacted or remain in force if that act would have the effect of conferring or denying benefits to any foreign government in conflict with the provisions of Title II which S. 854 would amend. In effect, the language of S. 854 implies a Federal preemption of State and local laws which

Mr. Tracy's letter describes a "negative veto" process in which the Secretary of State would approve or disapprove the application of a foreign government to locate in the United States and State and local laws would continue to prevail once an approval by the Secretary had been granted. In effect, once the Secretary said "yes" to a foreign mission in the United States, State and local zoning, and regulatory policies would control its location and scope.

The committee agrees with Mr. Tracy's interpretation of the provisions of Section 207.

With respect to the activities of foreign missions in the District of Columbia, a broader preemptive authority is envisioned. The new powers granted to the District of Columbia Foreign Missions Commission do authorize it to preempt and alter District of Columbia zoning and land use regulations. In addition, actions of the Commission could limit or modify the application of District of Columbia "building and related codes" (section 206(j)) and District of Columbia and Federal laws governing historic preservation (206(e)(3)) to foreign missions. However, in all other respects, District of Columbia laws and ordinances, including tax and penal codes, cannot be preempted by this legislation.

Section 208—General provisions

Section 208 contains general administrative provisions to enable the Office of Foreign Missions to operate as an adjunct of the Department of State, not affected by the day-to-day operations of the Department. It also provides protection for persons against liability for actions taken in good faith under this title. Protection is also accorded assets of or under the control of the Office of Foreign Missions.

Section 208(a) authorizes the Secretary to issue regulations to implement the policy of the title. These regulations will be controlling in determining the application of this title.

Section 208(b) provides protection against liability for persons acting in good faith to implement the title. This is intended particularly as a protection to private companies and individuals who would, in the normal course of doing business with foreign missions, be liable for breach of contract or other violations of duly constituted agreements. In all cases involving actions under this title by the Office of Foreign Missions, and good faith compliance by any persons involved, it is the committee's intent that no liability should attach to those persons.

The committee notes that the term "person" is intended to cover any juridical person, including any corporation or organization, as well as individuals. "Direction" by the Secretary is intended to include any official request for action or inaction.

This provision is derived from the Trading with the Enemy Act and the International Emergency Economic Powers Act and is to be construed as broadly as the corresponding provisions of those acts.

Section 208(c) provides the necessary authorities to hire personnel and acquire necessary services in order to meet any atypical needs of administering this title. The functions and personnel requirements of the Office of Foreign Missions may require employee services beyond those available to the Department of State, and which could be required on an intermittent or temporary basis. Examples include prop-

erty and zoning specialists, individuals to perform specialized liaison activities with State and local authorities or public utilities, or to provide travel or other services to implement constraints on foreign missions, and the like. The committee accepted the deletions of sections 208 (c) (1) and (c) (2) proposed by the Foreign Relations Committee.

Section 208(d) provides authority for contracts for supplies and services, other than personal services covered by subsection (c) above. This subsection contains flexible contracting authority necessary to meet the requirements of this title, which in some cases may not be covered by standard procedures for supplies and services for general office purposes. Furthermore, these needs cannot always be anticipated in time to permit the operation of normal advertising and procurement processes. In addition, security requirements may necessitate special procurement procedures in some cases.

The committee notes that the procurement laws generally applicable to government agencies are intended to cover the needs of those agencies for supplies and services at the taxpayers' expense. By contrast, the Office of Foreign Missions will, on many occasions, procure supplies and services for foreign missions which will be paid for by those missions. Unlike present practice, where the Secretary of State exercises little or no control over procurement of supplies and services for foreign missions, this new procedure will permit such control. An example of such a requirement would be the need to find a local employment service which a foreign mission would be required to use to hire local employees. The authority of this subsection will be used only when necessary and will permit these unusual requirements to be met in a timely manner.

Section 208(e) provides authority to the Office of Foreign Missions to obtain property or services from, or provide services or assistance to, other Federal agencies. This is intended to maximize interagency cooperation and to increase the efficiency and effectiveness of the Office of Foreign Missions.

Section 208(f) provides assurance that any assets held by or under the control of the Office of Foreign Missions will be exempt insofar as attachment, execution, and judicial process are concerned. This is necessary to assure that the functions of a foreign mission may not be interrupted by judicial process as a result of the Office's involvement with the interests of a foreign mission in the discharge of the Office's duties and responsibilities under this title.

Section 208(g) parallels the provisions of section 202(b) with respect to the authority of the Secretary to make determinations. This is necessary in order to avoid inconsistent interpretations or policies. As is the case with the Secretary's authority to make determinations with respect to the meaning and applicability of terms under section 202, this discretionary authority is subject to judicial review.

Aside from the proceedings before the Commission, which necessarily involve full public participation, actions and determinations under this title are in most cases political in nature, involving considerations of foreign policy and national security. Therefore, this subsection also provides that, except for the procedural requirements under section 206 in connection with hearings and other proceedings before the District of Columbia Foreign Missions Com-

mission, determinations otherwise required under the title shall be limited to a requirement to adhere to appropriate administrative processes established by the Department, or by other agencies or officials vested with such responsibility. Exercise of the authority granted to the Department of State is not subject to the rulemaking requirements of section 553 of title 5.

Section 208(h) provides that fiscal needs of the Office of Foreign Missions and funding procedures for implementation of this title may be managed by the Secretary of State as part of the Department's working capital fund, established by section 13 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2684). This method of funding and audit control under established procedures of the working capital fund is appropriate for activities for which procurement and fiscal requirements cannot be anticipated in advance or on a scheduled basis. In addition, the committee believes that because the funds received from foreign missions will be used to provide benefits to foreign missions, the use of the working capital fund offers a practical way for the Office of Foreign Missions to be responsive to changing requirements. Therefore, this subsection provides for the use of the fund at the Secretary's discretion in lieu of otherwise applicable procedures concerning receipts and expenditures by the Government. The committee will continue to monitor the operations of the working capital fund, as it has done in the past.

Section 209—Application to public international organizations and official missions to such organizations

Section 209 grants authority to the Secretary to apply provisions of this title to international organizations or missions thereto, where it is deemed appropriate to carry out the purposes of the title. This section recognizes the special relationship of the United States to the international organizations with headquarters in this country, and the separate international agreements applicable to that relationship.

Section 209(a) specifically authorizes the Secretary of State to make any provision of this title applicable to an international organization to the same extent that it applies to a foreign mission. "Consultation" is expected to include such informal processes as shall not unnecessarily delay implementation of this Act.

The term "international organization" is defined in section 209(b) as a public international organization designated as such pursuant to the International Organizations Immunities Act or other law. For the most part, such organizations are identified in Executive Order 9698, and subsequent Executive orders (22 U.S.C. 288 note). This definition also includes missions to international organizations which, although they usually represent individual sending states, are dealt with primarily in the context of relations between the United States and the international organizations. The committee expects that particular provisions of the title will be applied to particular organizations if it is deemed necessary in order to carry out the policy of this legislation. The international obligations of the United States to assist and regulate the operations of international organizations are equally as important as the obligations attaching to missions of sending states accredited to the United States.

Section 210—Privileges and immunities

This section declares that nothing in this title, including the congressional declaration of findings and policy in section 201, is intended to amend or supersede international obligations undertaken by the United States or other obligations required by U.S. law in connection with the conduct of activities by foreign missions and international organizations. Constraints placed pursuant to this title upon the conduct of foreign missions in the United States are not incompatible with permission granted by the Federal Government to conduct diplomatic and related activities in the United States. It is expected that implementation of this title will encourage a proper balancing of treatment of the foreign missions involved and will, in fact, enhance the ability of the United States to discharge its international treaty and other legal obligations. Finally, the last sentence of this subsection prevents a waiver of immunity by implication, in a manner consistent with the Foreign Immunities Act of 1976 and the Vienna Convention on Diplomatic Relations.

Section 211—Enforcement

Section 211 applies to parties dealing with foreign missions, and limits enforcement by the Federal Government generally to equitable or other appropriate relief through the Federal courts. This section also provides notice to third parties of the possible invalidity or impairment of contract provisions entered into in violation of this title. In view of the large number of circumstances which could arise, it is necessary to leave to applicable judicial remedies the resolution of questions with respect to the enforceability and effect of contracts or performance thereunder which the Secretary finds are in violation of this title. The committee fully expects the Secretary of State to minimize the need for judicial remedy by making it clear that foreign missions should, as a normal practice, consult with the Department of State before making commitments. Since the process of consultation by a foreign mission with the Department is an integral aspect of bilateral relations today, this places no real burden on foreign missions. Instead, it will afford greater protection to their operations, and should result in improvement of their representational activities.

Section 212—Severability

Section 212 contains a standard severability clause. Inclusion of this clause is appropriate in view of the new authorities granted the Government and the resulting possibility of litigation. Thus, if a particular provision of the title or its application in a given case is held to be invalid, the remainder of the title or the application of its provisions will not be affected thereby. This will provide greater flexibility for a reviewing court to interpret broadly the provisions of the title in order to carry out its purposes. The foreign missions title is remedial in nature and is intended to provide redress in areas in which the Secretary of State finds that the Federal interest has been adversely affected.

Section 1(c) of the bill amends section 13 of the State Department Basic Authorities Act of 1956 to include the relevant functions in the foreign missions title as part of the State Department's working capital fund authorities.

Section 1(d) contains amendments clarifying certain provisions of the Diplomatic Relations Act, which was reported by the Committee on Foreign Affairs and enacted by the Congress in 1978.

Section 1(d)(1) amends the definition of "members of a mission" in section 2(1)(A) of the Diplomatic Relations Act to add explicit reference to members who, although not "diplomatic staff" (as that term is used in the Vienna Convention on Diplomatic Relations), have been granted equivalent status pursuant to law. This will avoid any questions about the rights and corresponding obligations under the act of the senior staff of nondiplomatic missions who, under special legislation, are accorded the same privileges and immunities as the senior staff of a diplomatic mission.

Section 1(d)(2) adds explicit reference to the mission itself in section 3(b) of the Diplomatic Relations Act which specifies that the Vienna Convention on Diplomatic Relations shall be the governing standard in the United States with respect to privileges and immunities for nonparties to the Vienna Convention. As presently worded, section 3(b) does not specifically refer to privileges and immunities such as inviolability of premises, which apply to the mission rather than to any individual member thereof.

Section 1(d)(3)(A) similarly adds an explicit reference to the mission itself in section 4 of the Diplomatic Relations Act, which authorizes more favorable or less favorable treatment in the United States on the basis of reciprocity. Like section 3(b), discussed above, section 4 of the Diplomatic Relations Act presently refers only to individuals, giving rise to the same questions of interpretation. These amendments to section 3(b) and 4 of the act are in accord with the State Department's interpretations of the present law and are merely designed to correct an earlier drafting oversight.

Section 1(d)(3)(B) also amends section 4 of the Diplomatic Relations Act to delete the reference to "any sending state." This will assure that section 4 applies to missions or entities other than "sending states," such as that of the Commission of the European Communities, which are also intended to be covered by the Diplomatic Relations Act.

Section 1(d)(4) amends title 28 of the U.S. Code, by making applicable thereto the definition of "mission" contained in the Diplomatic Relations Act, rather than the definition contained in the Vienna Convention on Diplomatic Relations. This broadening of the definition will eliminate the present unintended disparity between the "missions" which are obliged to maintain liability insurance under section 6 of the Diplomatic Relations Act and the "missions" whose insurers may be named as defendants in direct actions by accident victims.

Section 1(e) repeals the Chancery Act of 1964. That Act states:

> No foreign government shall be permitted to construct, alter, repair, convert, or occupy a building for use as a chancery where official business of such government is to be conducted * * * within any district or zone restricted in accordance with this Act to use for residential purposes except medium high density apartment districts and high density apartment districts.

IV. Chronology of the Legislation

The Foreign Missions Act (S. 854) differs from the Diplomatic Reciprocity Act (S. 2866) introduced in the 96th Congress on June 24, 1980.

THE DIPLOMATIC RECIPROCITY ACT (S. 2866)

The Diplomatic Reciprocity Act had the same purposes as the Foreign Missions Act. However, the earlier bill established a "Diplomatic Services Corporation" within the executive branch to perform virtually the same functions as the proposed Office of Foreign Missions, subject to the approval of the Secretary of State.

A hearing was held on July 26, 1980 by the House Foreign Affairs Subcommittee on International Operations on the substance of S. 2866.

Witnesses were: The Honorable Thomas M. Tracy, Assistant Secretary of State for Administration; Harold S. Burman, Office of the Legal Advisor, Department of State; and Sylvan Marshall, partner in Marshall, Leon, Weill, and Mahony, attorneys at law.

THE FOREIGN MISSIONS ACT (S. 854)

S. 854 was introduced on April 1, 1981, and referred to the Committee on Foreign Relations with a 45 day sequential referral to the Committee on Governmental Affairs.

On July 24, 1981, the Committee on Foreign Relations held a public hearing on the bill.

Witnesses were: The Honorable Marion S. Barry, Jr., Mayor of the District of Columbia, accompanied by: Mr. James O. Gibson, Assistant City Administrator for Planning & Development. The Honorable Thomas M. Tracy, Assistant Secretary for Administration, Department of State, accompanied by: Mr. James H. Michel, Acting Legal Adviser. The Honorable Arrington L. Dixon, Chairman, Council of the District of Columbia. Mr. Sylvan M. Marshall, Marshall, Leon, Weill & Mahoney, Washington, D.C. Mr. Whayne S. Quin, Wilkes & Artis, Chartered, Washington, D.C. Mr. George Blow, Patton, Boggs & Blow, testifying on behalf of Sheridan-Kalorama Neighborhood Council & Ad Hoc Committee on the Foreign Missions bill. Mr. John Lawrence Hargrove, Citizens Planning Coalition of the District of Columbia, Inc.

On November 10, 1981, the Committee met in public session to mark up S. 854. At that time, an amendment offered by Senator Mathias to delete section 206 and the references to the Chancery Act of 1964 was defeated by a vote of 9 to 7. Those voting in favor of the amendment were: Senators Hayakawa, Mathias, Kassebaum, Pell, Biden, Sarbanes, and Cranston. Those voting against the amendment were: Senators Percy, Baker, Helms, Lugar, Boschwitz, Pressler, Zorinsky, Tsongas, and Dodd.

The committee then adopted a series of perfecting amendments offered by Senator Percy by a voice vote with a quorum of the committee present.

One of those amendments substitutes a 7 member "Foreign Missions Commission" for the originally-proposed National Capital Planning Commission as the agency to rezone the District of Columbia for business offices of foreign governments (chanceries).

The bill, as amended, was ordered favorably reported to the Senate by a voice vote with a quorum of the committee present and voting.

THE FOREIGN MISSIONS ACT (S. 1818)

This bill provided for an Office of Foreign Missions within the State Department to confer or deny privileges, benefits, and immunities on foreign missions within the United States.

It did not make any change in the present composition or procedure of the D.C. Zoning Commission or Board of Zoning Adjustment. Nor did it repeal the Chancery Act of 1964.

This bill was referred to the Committee on Foreign Relations. No hearing has been held.

DEPARTMENT OF STATE AUTHORIZATION ACT FISCAL YEARS 1982 AND 1983 (H.R. 3518)

The State Department authorization bill, H.R. 3518, was introduced in the House on May 12, 1981.

Section 119 of that bill contains most of the provisions of S. 854, the Foreign Missions Act.

On May 19, 1981, the House Committee on the District of Columbia was sequentially referred Section 119 because of its impact on the District of Columbia Home Rule charter.

On June 4, 1981, the House Committee on the District of Columbia held a hearing on the provision.

On June 18, 1981, the House Committee on the District of Columbia by voice vote reported H.R. 3518 with an amendment. The amendment struck the provisions of the bill, which place zoning authority for chanceries in the NCPC and also dropped a repeal of the Chancery Act of 1964.

On September 17, 1981, the State Department Authorization bill was debated in the House of Representatives. When the House District Committee's amendment to strike was offered, a substitute amendment was offered by the Chairman of the House Foreign Affairs Subcommittee on International Operations, Mr. Fascell.

The substitute provided for zoning for chanceries to be determined by a 7-member Foreign Missions Commission, consisting of 3 Federal representatives and 3 District of Columbia representatives and the Architect of the Capitol. In addition, the substitute repealed the Chancery Act of 1964.

The substitute was agreed to by voice vote. The full bill, however, failed to pass on September 17, 1981.

On October 29, 1981, the House amended and passed the Senate version of the State Department Authorization Act, S. 1193.

The House-passed version of S. 1193 contains the same text with regard to foreign missions as S. 854, as reported by the Senate Foreign Relations Committee.

The Senate-passed version of S. 1193 does not contain a foreign mission section.

The House asked for a conference on S. 1193 on October 29, 1981. The Senate agreed to a conference on November 13.

CHANGING THE D.C. ZONING PROCESS FOR EMBASSIES AND CHANCERIES (H.R. 3714)

H.R. 3714 was introduced in the House on May 28, 1981 by the Chairman of the House Committee on the District of Columbia.

The bill retained zoning jurisdiction in the two existing D.C. Zoning bodies. It required the State Department to make recommendations on individual chancery zoning cases to those bodies and set time limits for such decisions.

It also provided for the State Department to appeal Zoning Commission decisions to the NCPC, without reference to the Administrative Procedures Act.

No hearings were held on this legislation.

V. Regulatory Impact

In accordance with Rule XXVI, paragraph 11(b) of the Standing Rules of the Senate, the Committee finds that this legislation may result in some new federal regulations by the Office of Foreign Missions which would have an impact on American businesses such as suppliers of goods and services to representatives of foreign missions.

This legislation may require notification to third parties, both businesses and government at all levels, of the terms and conditions under which certain benefits to specific foreign governments would be conferred or denied. Thus, conceivably there could be federal regulations instructing suppliers of goods and services, or other government bodies as to how they should proceed with respect to certain foreign governments.

VI. Cost Estimate

In accordance with Rule XXVI, paragraph 11(a) of the Standing Rules of the Senate, the Committee provides the cost of S. 854, the Foreign Missions Act.

U.S. Congress,
Congressional Budget Office,
Washington, D.C., March 26, 1982.

Hon. William V. Roth, Jr.,
Chairman, Committee on Governmental Affairs,
U.S. Senate, Washington, D.C.

Dear Mr. Chairman: Pursuant to section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed S. 854; a bill to promote the orderly conduct of international relations by facilitating the operation of foreign missions in the United States, thereby promoting the secure and efficient operation of United States missions abroad; as ordered reported by the Senate Governmental Affairs Committee on March 9, 1982.

This legislation creates an Office of Foreign Missions within the Department of State and a Foreign Missions Commission as an independent agency of the District of Columbia. Start up and operating costs of the Office and Commission are estimated to be less than one million dollars per year.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

Alice M. Rivlin, *Director.*

VII. Committee Action

The Subcommittee on Governmental Efficiency and the District of Columbia held a hearing on S. 854 on January 25, 1982.

Witnesses were: The Honorable Walter Fauntroy, Delegate from the District of Columbia; the Honorable Marion S. Barry, Jr., Mayor of the District of Columbia; the Honorable Thomas M. Tracy, Assistant Secretary for Administration, Department of State, accompanied by Mr. Walter F. Weiss, Deputy Assistant Secretary for Administration and Mr. Harold S. Burman, Office of the Legal Advisor; Mr. Harvey S. Pryor, Chief, Uniformed Division, U.S. Secret Service; Dr. Walter B. Lewis, Chairman, D.C. Zoning Commission, accompanied by Mr. Charles R. Norris, Chairman of the Board of Zoning Adjustment and Mr. Steven E. Sher, Executive Director of the D.C. Zoning Secretariat; Dr. Daniel R. Mandelker, Stamper Professor of Law, Washington University, St. Louis; Mr. John Lawrence Hargrove, Citizens Planning Coalition of the District of Columbia and the Ad Hoc Committee on the Foreign Missions Bill.

The subcommittee also received written testimony from the Honorable Stewart McKinney, the District of Columbia League of Women Voters, the Washington Board of Trade, and the chairman of the D.C. City Council.

The Subcommittee on Governmental Efficiency and the District of Columbia unanimously reported S. 854 to the full committee with four principal amendments. These were deletion of Section 206, the references to the Fulbright Act of 1964, the exemption from Federal rulemaking procedures (Title 5, U.S.C., Sec. 553) for the Secretary of State and the Office of Foreign Missions within the State Department, and revision of section 207.

On March 9, the committee voted to report S. 854 as amended by the Subcommittee on Governmental Efficiency and the District of Columbia. The committee conducted one vote on reporting S. 854. Those who supported reporting S. 854 as amended by the Subcommittee on Governmental Efficiency and the District of Columbia voted "yea." Those supporting the bill as referred to the committee and unamended by the subcommittee voted "nay." In compliance with section paragraph 7(c) of rule XXVI of the Standing Rules of the Senate, the vote on this matter was as follows:

Yeas—5	*Nays*—7
Mathias	Percy
Rudman	Danforth
Eagleton	Cohen
Sasser	Durenberger
Levin	Chiles
	Nunn
	Glenn

By this vote, the committee indicated its support for reporting the bill as referred to it from the Committee on Foreign Relations.

VIII. Changes in Existing Law

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as

reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

STATE DEPARTMENT BASIC AUTHORITIES ACT OF 1956

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, [That the Secretary]

TITLE I—BASIC AUTHORITIES GENERALLY

SECTION 1. THE SECRETARY of State is authorized to establish, maintain, and operate passport and despatch agencies.

* * * * * * *

SEC. 13. (a) There is hereby established a working capital fund for the Department of State, which shall be available without fiscal year limitations, for expenses (including those authorized by the Foreign Service Act of 1980) and equipment, necessary for maintenance and operation in the city of Washington and elsewhere of (1) central reproduction, editorial, data processing, audiovisual, library and administrative support services; (2) central services for supplies and equipment (including repairs); (3) such other administrative services as the Secretary, with the approval of the Bureau of the Budget, determines may be performed more advantageously and more economically as central services; [and] (4) medical and health care services*; and (5) services and supplies to carry out title II of this Act.* The capital of the fund shall consist of the amount of the fair and reasonable value of such supply inventories, equipment, and other assets and inventories on order, pertaining to the services to be carried on by the fund, as the Secretary may transfer to the fund, less the related liabilities and unpaid obligations, together with any appropriations made for the purpose of providing capital. The fund shall be reimbursed, or credited with advance payments, from applicable appropriations and funds of the Department of State, other Federal agencies, and other sources authorized by law, for supplies and services at rates which will approximate the expense of operations, including accrual of annual leave and depreciation of plant and equipment of the fund. The fund shall also be credited with other receipts from sale or exchange of property or in payment for loss or damage to property held by the fund. There shall be transferred into the Treasury as miscellaneous receipts, as the close of each fiscal year, earnings which the Secretary determines to be excess to the needs of the fund.

(b) The current value of supplies returned to the working capital fund by a post, activity, or agency may be charged to the fund. The proceeds thereof shall, if otherwise authorized, be credited to current applicable appropriations and shall remain available for expenditures for the same purposes for which those appropriations are available. Credits may not be made to appropriations under this subsection as the result of capitalization of inventories.

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TITLE II—AUTHORITIES RELATING TO THE REGULATION OF FOREIGN MISSIONS

DECLARATION OF FINDINGS AND POLICY

SEC. 201. (a) The Congress finds that the operation in the United States of foreign missions and public international organizations and the official missions to such organizations, including the permissible scope of their activities and the location and size of their facilities is a proper subject for the exercise of Federal jurisdiction.

(b) The Congress declares that it is the policy of the United States to support the secure and efficient operation of United States missions abroad, to facilitate the secure and efficient operation in the United States of foreign missions and public international organizations and the official missions to such organizations, and to assist in obtaining appropriate benefits, privileges, and immunities for those missions and organizations and to require their observance of corresponding obligations in accordance with international law.

(c) The assistance to be provided to a foreign mission in the United States shall be determined after due consideration of the benefits, privileges, and immunities provided to missions of the United States in the country or territory represented by that foreign mission.

DEFINITIONS

SEC. 202. (a) For purposes of this title—

(1) "benefit" (with respect to a foreign mission) means any acquisition, or authorization for an acquisition, in the United States by or for a foreign mission, including the acquisition of—

(A) real property by purchase, lease, exchange, construction, or otherwise,

(B) public services, including services relating to customs, importation, and utilities, and the processing of applications or requests relating to public services,

(C) supplies, maintenance, and transportation,

(D) locally engaged staff on a temporary or regular basis,

(E) travel and related services, and

(F) protective services,

and includes such other benefits as the Secretary may designate;

(2) "chancery" means the principal offices of a foreign mission used for diplomatic or related purposes, and annexes to such offices (including ancillary offices and support facilities), and includes the site and any building on such site which is used for such purposes;

(3) "Director" means the Director of the Office of Foreign Missions established pursuant to section 203(a);

(4) "foreign mission" means any official mission to the United States involving diplomatic, consular, or other governmental activities of—

(A) a foreign government, or

(B) an organization (other than an international organization, as defined in section 209(b) of this title) representing a territory or political entity which has been granted diplo-

matic or other official privileges and immunities under the laws of the United States.

including any real property of such a mission and including the personnel of such a mission;

(5) "real property" includes any right, title, or interest in or to, or the beneficial use of, any real property in the United States, including any office or other building;

(6) "Secretary" means the Secretary of State;

(7) "sending state" means the foreign government, territory, or political entity represented by a foreign mission; and

(8) "United States" means, when used in a geographic sense, the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

(b) Determinations with respect to the meaning and applicability of the terms used in subsection (a) shall be committed to the discretion of the Secretary.

OFFICE OF FOREIGN MISSIONS

SEC. 203. (a) The Secretary shall establish an Office of Foreign Missions as an office within the Department of State. The Office shall be headed by a Director, appointed by the Secretary, who shall perform his or her functions under the supervision and direction of the Secretary. The Secretary may delegate this authority for supervision and direction of the Director only to the Deputy Secretary of State or an Under Secretary of State.

(b) The Secretary may authorize the Director to—

(1) assist agencies of Federal, State, and municipal government with regard to ascertaining and according benefits, privileges, and immunities to which a foreign mission may be entitled;

(2) provide or assist in the provision of benefits for or on behalf of a foreign mission in accordance with section 204; and

(3) perform such other functions as the Secretary may determine necessary in furtherance of the policy of this title.

PROVISION OF BENEFITS

SEC. 204. (a) Upon the request of a foreign mission, benefits may be provided to or for that foreign mission by or through the Director on such terms and conditions as the Secretary may approve.

(b) If the Secretary determines that such action is reasonably necessary on the basis of reciprocity or otherwise—

(1) to facilitate relations between the United States and a sending State,

(2) to protect the interests of the United States,

(3) to adjust for costs and procedures of obtaining benefits for missions of the United States abroad, or

(4) to assist in resolving a dispute affecting United States interests and involving a foreign mission or sending State.

then the Secretary may require a foreign mission (A) to obtain benefits from or through the Director on such terms and conditions as the Secretary may approve, or (B) to comply with such terms and conditions as the Secretary may determine as a condition to the execution or per-

formance in the United States of any contract or other agreement; the acquisition, retention, or use of any real property; or the application for or acceptance of any benefit (including any benefit from or authorized by any Federal, State, or municipal governmental authority, or any entity providing public services).

(c) Terms and conditions established by the Secretary under this section may include—

(1) a requirement to pay to the Director a surcharge or fee, and

(2) a waiver by a foreign mission (or any assignee of or person deriving rights from a foreign mission) of any recourse against any governmental authority, any entity providing public services, any employee or agent of such an authority or entity, or any other person, in connection with any action determined by the Secretary to be undertaken in furtherance of this title.

(d) For purposes of effectuating a waiver of recourse which is required under this section, the Secretary may designate the Director or any other officer of the Department of State as the agent of a foreign mission (or of any assignee of or person deriving rights from a foreign mission). Any such waiver by an officer so designated shall for all purposes (including any court or administrative proceeding) be deemed to be a waiver by the foreign mission (or the assignee of or other person deriving rights from a foreign mission).

(e) Nothing in this section shall be deemed to preclude or limit in any way the authority of the United States Secret Service to provide protective services pursuant to section 202 of title 3, United States Code, or section 3056 of title 18, United States Code, at a level commensurate with protective requirements as determined by the United States Secret Service.

PROPERTY OF FOREIGN MISSIONS

SEC. 205. (a) (1) The Secretary may require any foreign mission to notify the Director prior to any proposed acquisition, or any proposed sale or other disposition, or any real property by or on behalf of such mission. If such a notification is required, the foreign mission (or other party acting on behalf of the foreign mission) may initiate or execute any contract, proceeding, application, or other action required for the proposed action—

(A) only after the expiration of the sixty-day period beginning on the date of such notification (or after the expiration of such shorter period as the Secretary may specify in a given case); and

(B) only if the mission is not notified by the Secretary within that period that the proposal has been disapproved; however, the Secretary may include in such a notification such terms and conditions as the Secretary may determine appropriate in order to remove the disapproval.

(2) For purposes of this section, "acquisition" includes any acquisition or alteration of, or addition to, any real property or any change in the purpose for which real property is used by foreign mission.

(b) The Secretary may require any foreign mission to divest itself of, or forgo the use of, any real property determined by the Secretary—

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(1) not to have been acquired in accordance with this section; or

(2) to exceed limitations placed on real property available to a United States mission in the sending state.

(c) If a foreign mission has ceased conducting diplomatic, consular and other governmental activities in the United States and has not designated a protecting power or other agent approved by the Secretary to be responsible for the property of that foreign mission, the Secretary—

(1) until the designation of a protecting power or other agent approved by the Secretary, may protect and preserve any property of that foreign mission; and

(2) may authorize the Director to dispose of such property at such time as the Secretary may determine after the expiration of the one-year period beginning on the date that the foreign mission ceased those activities, and may remit to the sending state the net proceeds from such disposition.

LOCATION OF FOREIGN MISSIONS IN THE DISTRICT OF COLUMBIA

SEC. 206. (a) In order to ensure the fulfillment of the international obligations of the United States and the policy of this title, the location, replacement, or expansion of any building or other real property in the District of Columbia which is used for the diplomatic, consular, or other governmental activities (except property used exclusively for residential purposes) of a foreign mission shall be subject to the approval of the District of Columbia Foreign Missions Commission as provided in this section.

(b)(1) There is hereby created, as an independent agency of the District of Columbia, the District of Columbia Foreign Missions Commission (hereafter in this section referred to as the "Foreign Missions Commission") which shall consist of the five members of the Zoning Commission for the District of Columbia (as such members are designated by section 492(a) of the District of Columbia Self-Government and Governmental Reorganization Act (D.C. Code, sec. 5-412)), the Chairman of the National Capital Planning Commission, and the Secretary of Defense, or such alternate as each such person may be designated from time to time.

(2) While actually engaged in the performance of duties as a member of the Foreign Missions Commission, the Chairman of the National Capital Planning Commission (or the alternate designated by the Chairman) shall be compensated by the District of Columbia in the manner and at the rates applicable to the members of the Zoning Commission for the District of Columbia who are appointed by the Mayor.

(3) The Mayor of the District of Columbia shall furnish such facilities and administrative services, and shall assign such employees, to the Foreign Missions Commission as may be required by the Commission to carry out this section.

(c) The Foreign Missions Commission shall—

(1) establish areas within which chanceries may be located as a matter of right, and

(2) establish additional areas within which chanceries may be located.

Limitations on chancery uses shall not exceed those applicable to any other nonresidential use in the areas so established.

(d) Any determination by the Foreign Missions Commission pursuant to this section, including the establishment of areas in accordance with paragraphs (1) and (2) of subsection (c), shall be considered rulemaking under the District of Columbia Administrative Procedure Act (D.C. Code, secs. 1–1501—1–1510).

(e) Any determination by the Foreign Missions Commission with respect to chanceries pursuant to this section, including the establishment of areas in accordance with paragraphs (1) and (2) of subsection (c), shall be based solely on the following criteria:

(1) The obligation of the United States to facilitate the provision of adequate and secure facilities for foreign missions in the Nation's Capital.

(2) The chancery is in or adjacent to an area, determined on the basis of existing or planned uses, of (A) commercial use, or (B) mixed uses, including residential, commercial, office, or institutional use.

(3) Historic preservation, as determined by the Foreign Missions Commission in carrying out this section; except that substantial compliance with District and Federal laws governing historic preservation shall be required with respect to new construction and to demolition of or alteration to historic landmarks, in order to ensure compatibility with historic landmarks and districts.

(4) The adequacy of off-street or other parking and the extent to which the area will be served by public transportation to reduce parking requirements, subject to such special security requirements as may be determined by the Secretary.

(5) The extent to which the area will have adequate public facilities, utilities, and services, including streets, street lighting, water, sewer, electricity, telephone, and refuse collection.

(6) The extent to which the area is capable of being adequately protected, as determined by a Federal agency authorized to perform protective services.

(7) The municipal interest, as determined by the Mayor of the District of Columbia.

(8) The Federal interest, as determined by the Secretary.

Any other determination by the Foreign Missions Commission pursuant to this section shall be based solely on the criteria specified in paragraphs (1), (3), (6), (7), and (8), and such other criteria as the Commission may by regulation establish.

(f)(1) The regulations, proceedings, and other actions of the Foreign Missions Commission pursuant to this section shall not be inconsistent with Federal elements of the comprehensive plan for the National Capital. All elements of the comprehensive plan relating to the location of foreign missions shall be based solely on the criteria set forth in this section and shall reflect the policy of this title.

(2) Proposed determinations by the Foreign Missions Commission shall be referred to the National Capital Planning Commission for review and comment.

(g) The Foreign Missions Commission shall promulgate such regulations as it determines are necessary for it to carry out this section.

(h) This section shall not be construed to authorize, and the regulations of the Foreign Missions Commission shall not provide for or require, procedures in the nature of a special exception or administrative proceedings of an adjudicatory nature.

(i) In any proceeding with respect to approval of the location, replacement, or expansion of real property of a foreign mission pursuant to this section, the final determination by the Foreign Missions Commission shall be made not later than six months after the date of filing an application for such approval. Any such determination shall not be subject to administrative proceedings of any other agency or official except as provided in this title. Any such determination by the Foreign Missions Commission shall ensure the fulfillment of the obligation of the United States to facilitate the provision of adequate and secure facilities for foreign missions and shall take into account special security requirements as determined by the Secretary.

(j) The Secretary shall require foreign missions to comply substantially with District of Columbia building and related codes in a manner determined by the Secretary to be not inconsistent with the international obligations of the United States.

(k) The United States, acting on its own behalf or on behalf of a foreign mission—

(1) has standing to bring an action for judicial review of a determination by the Foreign Missions Commission under this section or, where appropriate, for judicial enforcement of the requirements of this section applicable to the Commission; and

(2) has standing to intervene in any such action which is otherwise pending.

(l) Approval by the Foreign Missions Commission under this section or, except as provided in section 205, by any other agency or official is not required—

(1) for the location, replacement, or expansion of real property of a foreign mission to the extent—

(A) that authority to proceed with respect to such location, replacement, or expansion was granted to the foreign mission before the date of enactment of this section, or

(B) that rights or interests with respect to such location, replacement, or expansion were otherwise acquired by the foreign mission before the date of enactment of this section; or

(2) for continuing use of real property by a foreign mission for diplomatic, consular, or other governmental activity to the extent that such property was being used by that foreign mission for that activity on the date of enactment of this section.

PREEMPTION

SEC. 207. Notwithstanding any other provision of law, no act of any Federal agency or of any State or municipal governmental authority shall be effective to confer or deny any benefits with respect to any foreign mission contrary to this title.

GENERAL PROVISIONS

SEC. 208. (a) The Secretary may issue such regulations as the Secretary may determine necessary to carry out the policy of this title.

(b) compliance with any regulation, instruction, or direction issued by the Secretary under this title shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same. No person shall be held liable in any court or administrative proceeding for or with respect to anything done or omitted in good faith in connection with the administration of, or pursuant to and in reliance on, this title, or any regulation, instruction, or direction issued by the Secretary under this title.

(c) For purposes of administering this title, the Secretary may--

(1) employ experts and consultants in accordance with section 3109 of title 5, United States Code, at rates not to exceed the rate payable for grade GS-18 level; and

(2) accept details and assignments of employees of Federal agencies to the Office of Foreign Missions on a reimbursable or nonreimbursable basis (with any such reimbursements to be credited to the appropriations made available for the salaries and expenses of officers and employees of the employing agency).

(d) Contracts and subcontracts for supplies or services (except for personal services), made by or on behalf of the Director, shall be made after advertising, in such manner and at such times as the Secretary shall determine to be adequate to ensure notice and opportunity for competition, except that advertisement shall not be required when (1) the Secretary determines that it is impracticable or will not permit timely performance to obtain bids by advertising, or (2) the aggregate amount involved in a purchase of supplies or procurement of services does not exceed $10.000. Such contracts and subcontracts may be entered into without regard to laws and regulations otherwise applicable to solicitation, negotiation, administration, and performance of government contracts. In awarding contracts, the Secretary may consider such factors as relative quality and availability of supplies or services and the compatability of the supplies or services with implementation of this title.

(e) The head of any Federal agency may, for purposes of this title—

(1) transfer or loan any property to, and perform administrative and technical support functions and services for the operations of, the Office of Foreign Missions (with reimbursements to agencies under this paragraph to be credited to the current applicable appropriation of the agency concerned); and

(2) acquire and accept services from the Office of Foreign Missions, including (whenever the Secretary determines it to be in furtherance of the purposes of this title) acquisitions without regard to laws normally applicable to the acquisition of services by such agency.

(f) Assets of or under the control of the Office of Foreign Missions, wherever situated, which are used by or held for the use of a foreign mission shall not be subject to attachment, execution, injunction, or similar process, whether intermediate or final.

(g) Except as otherwise provided, any determination required under this title shall be committed to the discretion of the Secretary. Except as provided in the first sentence of section 206(b), actions taken under the authority of this title shall not be considered rule-

making within the meaning of section 553 of title 5, United States Code.

(h) (1) In order to implement this title, the Secretary may transfer such amounts available to the Department of State as may be necessary to the working capital fund established by section 13 of this Act.

(2) All revenues, including proceeds from gifts and donations, received by the Director or the Secretary in carrying out this title may be credited to the working capital fund established by section 13 of this Act and shall be available for purposes of this title in accordance with that section.

APPLICATION TO PUBLIC INTERNATIONAL ORGANIZATIONS AND OFFICIAL MISSIONS TO SUCH ORGANIZATIONS

SEC. 209. (a) The Secretary may make section 206, or any other provisions of this title, applicable with respect to an international organization to the same extent that it is applicable with respect to a foreign mission if the Secretary determines, after consultation with the international organization, that such application is necessary to carry out the policy set forth in section 201(b) and to further the objectives set forth in section 204(b).

(b) For purposes of this section, "international organization" means—

(1) a public international organization designated as such pursuant to the International Organizations Immunities Act (22 U.S.C. 288—288f–2) or other law authorizing such status; and

(2) an official mission (other than a United States mission) to such a public international organization,

including any real property of such an organization or mission and including the personnel of such an organization or mission.

PRIVILEGES AND IMMUNITIES

SEC. 210. Nothing in this title shall be construed to limit the authority of the United States to carry out its international obligations, or to supersede or limit immunities otherwise available by law. No act or omission by any foreign mission, public international organization, or official mission to such an organization, in compliance with this title, shall be deemed to be an implied waiver of any immunity otherwise provided for by law.

ENFORCEMENT

SEC. 211. It shall be unlawful for any person to make available any benefits to a foreign mission contrary to this title. This section shall be enforceable in any appropriate district court of the United States by injunctive or other equitable relief upon application by the Attorney General.

SEVERABILITY

SEC. 212. If any provision of this title or the application thereof to any person or circumstance is held invalid, the remainder of this title and the application of such provision to any other person or circumstance shall not be affected thereby.

Diplomatic Relations Act

AN ACT To complement the Vienna Convention of Diplomatic Relations

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

SHORT TITLE

SECTION 1. This Act may be cited as the "Diplomatic Relations Act".

DEFINITIONS

SEC. 2. As used in this Act—

(1) the term "members of a mission" means—

[(A) the head of a mission and members of the diplomatic staff of a mission.]

(A) the head of a mission and those members of a mission who are members of the diplomatic staff or who, pursuant to law, are granted equivalent privileges and immunities,

(B) members of the administrative and technical staff of a mission, and

(C) members of the service staff of a mission,

as such terms are defined in Article 1 of the Vienna Convention;

(2) the term "family" means—

(A) the members of the family of a member of a mission described in paragraph (1)(A) who form part of his or her household if they are not nationals of the United States, and

(B) the members of the family of a member of a mission described in paragraph (1)(B) who form part of his or her household if they are not nationals or permanent residents of the United States.

within the meaning of Article 37 of the Vienna Convention;

The term "mission" includes missions within the meaning of the Vienna convention and any missions representing foreign governments, individually or collectively, which are extended the same privileges and immunities, pursuant to law, as are enjoyed by missions under the Vienna Convention; and

(4) the term "Vienna Convention" means the Vienna Convention on Diplomatic Relations of April 18, 1961 (T.I.A.S. numbered 7502; 23 U.S.T. 3227), entered into force with respect to the United States on December 13, 1972.

ESTABLISHMENT OF THE VIENNA CONVENTION AS THE UNITED STATES LAW ON DIPLOMATIC PRIVILEGES AND IMMUNITIES

SEC. 3. (a)(1) Sections 4063 through 4066 of the Revised Statutes of the United States (22 U.S.C. 252–254) are repealed.

(2) The section analysis of title XLVII of the Revised Statutes of the United States is amended by striking out the items relating to sections 4063 through 4066.

[(b) Members of the mission of a sending state which has not ratified the Vienna Convention, their families, and the diplomatic couriers of such state, shall enjoy the privileges and immunities specified in the Vienna Convention.]

(b) With respect to a nonparty to the Vienna Convention, the mission, the members of the mission, their families, and diplomatic couriers shall enjoy the privileges and immunities specified in the Vienna Convention.

AUTHORITY TO EXTEND MORE FAVORABLE OR LESS FAVORABLE TREATMENT

SEC. 4. The President may, on the basis of reciprocity and under such terms and conditions as he may determine, specify privileges and immunities for *the missions, the* members of the mission, their families, and the diplomatic couriers [of any sending state] which result in more favorable treatment or less favorable treatment than is provided under the Vienna Convention.

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TITLE 28, UNITED STATES CODE

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CHAPTER 85—DISTRICT COURTS; JURISDICTION

* * * * * * *

§ 1364. Direct actions against insurers of members of diplomatic missions and their families

(a) The district courts shall have original and exclusive jurisdiction, without regard to the amount in controversy, of any civil action commenced by any person against an insurer who by contract has insured an individual, who is a member of a mission ([as defined in the Vienna Convention on Diplomatic Relations] *within the meaning of section 2(3) of the Diplomatic Relations Act (22 U.S.C. 254a(3))*) or a member of the family of such a member of a mission, or an individual described in section 19 of the Convention on Privileges and Immunities of the United Nations of February 13, 1946, against liability for personal injury, death, or damage to property.

(b) Any direct action brought against an insurer under subsection (a) shall be tried without a jury, but shall not be subject to the defense that the insured is immune from suit, that the insured is an indispensable party, or in absence of fraud or collusion, that the insured has violated a term of the contract, unless the contract was cancelled before the claim arose.

* * * * * * *

ACT OF JUNE 20, 1938

AN ACT Providing for the zoning of the District of Columbia and the regulation of the location, height, bulk, and uses of buildings and other structures and of the uses of land in the District of Columbia, and for other purposes

* * * * * * *

SEC. 6. [(a)] The permissible height of buildings in any district shall not exceed the maximum height of buildings now authorized upon any street in any part of the District of Columbia by the Act of Congress approved June 1, 1910, and amendments thereto, regulating the height of buildings in the District of Columbia.

[(b) After the date of enactment of this subsection a foreign government shall be permitted to construct, alter, repair, convert, or occupy a building anywhere in the District of Columbia, other than a district or zone restricted in accordance with this Act to use for industrial purposes, for use by such government as an embassy.

[(c) After the date of enactment of this subsection, except as otherwise provided in subsection (d) of this section, no foreign government shall be permitted to construct, alter, repair, convert, or occupy a building for use as a chancery where official business of such government is to be conducted on any land, regardless of the date such land was acquired, within any district or zone restricted in accordance with this Act to use for residential purposes.

[(d) After the date of enactment of this subsection a foreign government shall be permitted to construct, alter, repair, convert, or occupy a building for use a chancery within any district or zone restricted in accordance with this Act to use for medium-high density apartments or high density apartments if the Board of Zoning Adjustment shall determine after a public hearing that the proposed use and the building in which the use is to be conducted are compatible with the present and proposed development of the neighborhood. In determining compatibility the Board of Zoning Adjustment must find that—

[(1) in districts or zones restricted in accordance with this Act to use for medium-high density apartments, that off-street parking spaces will be provided at a ratio of not less than one such space for each twelve hundred square feet of gross floor area; and

[(2) in districts or zones restricted in accordance with this Act to use for high density apartments, that off-street parking spaces will be provided at a ratio of not less than one such space for each one thousand eight hundred square feet of gross floor area; and

[(3) the height of the building does not exceed the maximum permitted in the district or zone in which it is located; and

[(4) the architectural design and the arrangement of all structures and off-street parking spaces are in keeping with the character of the neighborhood.

[(e) As used in this section, the term—

[(1) "embassy" means a building used as the official residence of the chief of a diplomatic mission of a foreign government.

[(2) "chancery" means a building containing business offices of the chief of a diplomatic mission of a foreign government where official business of such government is conducted, and such term shall include any chancery annex, and the business offices of attachés of a foreign government who are under the personal direction and superintendence of the chief of mission of such government. Such term shall not include business offices of nondiplomatic missions of foreign governments such as purchasing, finan-

cial, educational, or other missions of comparable nondiplomatic nature.

[(3) "person" means any individual who is subject to direction by the chief of mission of a foreign government and is engaged in diplomatic activities recognized as such by the Secretary of State.]

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SEC. 16. The provisions of this Act shall not apply to Federal public buildings: *Provided, however*, That, in order to insure the orderly development of the National Capital, the location, height, bulk, number of stories, and size of Federal public buildings in the District of Columbia and the provision for open space in and around the same will be subject to the approval of the National Capital Park and Planning Commission. *In addition, the provisions of this Act shall not apply to any real property to which section 206(a) of the State Department Basic Authorities Act of 1956 (relating to foreign missions) is applicable.*

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IX. MINORITY VIEWS OF MESSRS. MATHIAS, EAGLETON, RUDMAN, LEVIN, AND SASSER

When S. 854 was voted upon by the Governmental Affairs Committee, we voted for a series of amendments to avoid an unneeded, unprecedented and unwise interference with time-honored powers exercised by hundreds of local governments, including the District of Columbia. Those amendments were reported unanimously by the Subcommittee on Governmental Efficiency and the District of Columbia. By a divided vote, with five abstentions, the Committee on Governmental Affairs did not agree with the recommendations of its Subcommittee. The result is that S. 854 is reported to the Senate without amendment by the Governmental Affairs Committee.

We agree with the overall purpose of S. 854 to provide a better enforcement mechanism for the United States to confer, deny, and set terms and conditions for privileges, benefits, and immunities for foreign governments in the United States. The proposed creation of an Office of Foreign Missions in Section 203 and its authorities in Sections 204 and 205 are necessary to achieve a better balance in the treatment of U.S. missions abroad and of foreign missions in the United States. We believe the establishment of such an Office within the Department of State is fully sufficient to achieve the purposes of this bill.

The conduct of diplomatic relations is properly one of quiet negotiation with due respect for the history, laws, and customs of the governments involved. Sections 206 and 207 of this bill are inappropriate federal instruments to ensure that decisions by the Office of Foreign Missions are enforced by state and local governments.

So that our colleagues can understand the seriousness of the problem raised by S. 854 as reported and the need for remedial amendments, we are setting forth our views on this matter at some length.

After consideration by the Foreign Relations Committee, S. 854 was referred to the Committee on Governmental Affairs and, in turn, its Subcommittee on Governmental Efficiency and the District of Columbia. Of particular concern to the Subcommittee on Governmental Efficiency and the District of Columbia was Section 206 which creates a federally-weighted commission to decide the location and use of land for chanceries (the business offices of foreign governments) in the District of Columbia, abrogating the limited Home Rule powers of the D.C. government. This issued was the initial focus on the Subcommittee's inquiry, which included a public hearing on January 25, 1982, examining the nature of the problem which the bill seeks to address, research into selective federal preemption of federal, state, and municipal law; into U.S. and international law on diplomatic relations; and a comparative analysis of zoning practices and law for facilities of foreign governments in major U.S. cities as well as other world capitals.

As explained more fully in the discussion that follows, we believe that the federal interest is adequately represented on the existing zoning bodies in the District of Columbia and that the Department of State has not documented the need for change. We reject Section 206 of the bill as unnecessary, duplicative, expensive, and violative of the Home Rule principles which Congress intended when, in 1973, it restructured the relations between the federal government and the District of Columbia.

Referral of S. 854 to the Governmental Affairs Committee also permitted us to focus on the broad federal preemption of Section 207 and its impact on state and local authorities. The 213 U.S. cities and towns whose home rule authorities in a vast array of areas are preempted by this section have a stake in the outcome of this bill as well.

The Subcommittee devoted attention to the wide discretion which S. 854 would give to the Secretary of State to preempt federal, state, and municipal laws on vague grounds. The Subcommittee received testimony and expressions of concern about this preemption language from the U.S. Conference of Mayors, the National League of Cities, and several State Attorneys General.

We support alternative language to Section 207 because we share the concerns of those organizations and because we believe such a sweeping federal preemption is unnecessary to accomplish the purposes of diplomatic reciprocity. We do not believe the Vienna Conventions or the Diplomatic Relations Act contemplated that foreign governments would be exempt from complying with the laws of the United States, including state and municipal law.

We believe there are four principal flaws in this bill which must be addressed by remedial amendments as offered by the Subcommittee:

1. It deleted the proposed federally-dominated "Foreign Missions Commission" to act as a special purpose zoning body for the District of Columbia. (Sec. 206.)

2. It revised the Preemption language to protect the decisionmaking prerogatives of municipal, as well as state and federal bodies with regard to foreign governments, while requiring them to give "substantial weight" to the views of the Secretary of State in making such decisions. (Sec. 207.)

3. It deleted the repeal of The Chancery Act of 1964. (Sec. (e).)

4. It removed the exemption from Title V rulemaking procedures for the Secretary of State.

Our reasoning for these changes is as follows:

1. "FOREIGN MISSIONS COMMISSION"

We disagree with the proposed creation of a federally-dominated "Foreign Missions Commission" in the District of Columbia to serve as a special purpose zoning board for foreign mission chanceries.

This proposal abrogates the Home Rule Act by removing zoning authority and decisionmaking over chancery locations from the D.C. Zoning Commission and Board of Zoning Adjustment. It would place this authority in a "Foreign Missions Commission", a 7 member body composed of 4 Federal members and 3 D.C. appointees.

We reject this proposal on the following grounds:

1. The federal interest is already adequately represented on both the D.C. Zoning Commission and the Board of Zoning Adjustment in their respective memberships.

The D.C. Zoning Commission, a 5 member board, has two federal members: the Architect of the Capitol and the Director of the National Park Service.

The D.C. Board of Zoning Adjustment, a 5 member board, has at least one federal member at all times, a representative of the National Capital Planning Commission. The fifth member rotates from the D.C. Zoning Commission. So, at some time, he may be a federal appointee, and, at other times, a D.C. appointee.

No other municipal zoning body in the United States has federal representatives on it. The Congress, in establishing the composition of the D.C. Zoning Commission and the D.C. Board of Zoning Adjustment, recognized the special federal interest that exists in the District of Columbia.

2. No compelling case has been made that the current D.C. zoning process fails to balance adequately the federal interest.

Since the 1978 adoption by the D.C. Zoning Commission of the Diplomatic Overlay Zone, 12 cases have come before the Board of Zoning Adjustment. Eleven have been granted. One has been denied. The one denial was a unanimous decision by the Board, including the federal member.

3. The proposed task of the "Foreign Missions Commission" would be redundant.

The proposed commission is charged with rezoning the District of Columbia for chancery uses.

This very process was completed in 1978 by the National Capital Planning Commission, a federal planning agency for the National Capital Region, and by the D.C. Zoning Commission, a process in which the State Department participated and concurred.

To date, that rezoning has not been challenged in court. Nor has the State Department formally expressed its dissatisfaction with the Diplomatic Zone to the D.C. Zoning Commission or the Board of Zoning Adjustment.

4. The proposed "Foreign Missions Commission" is inconsistent with the practices of numerous other foreign nations.

In many other foreign nations chancery locations are determined pursuant to local zoning law. Nor are there many foreign nations which have special purpose national commissions to determine chancery locations.

The State Department's own response to Subcommittee questions concerning how chancery locations are handled in 25 other foreign countries indicated that, in all but two nations (both state-directed economies), there exists no specal commission to deal with chancery locations and uses. In virtually all of the foreign nations reviewed, chancery uses are subject to local zoning. And in most of those foreign nations, both authoritarian and democratic, the zoning body is local in composition, either appointed, statutorily designated, or civil servants.

5. The proposed commission would add to the proliferations of special-purpose, independent agencies in the District of Columbia.

In an era of governmental reorganization and reduction, we do not believe the creation of yet another governmental agency is justified.

6. Due process would be seriously compromised in the procedures of the proposed commission.

No opportunity for a hearing on the proposed rezoning for chanceries would be mandated. Thus, District citizens and other interested parties would be denied the opportunity to present their views in person.

7. Federal legislation is not the proper forum for the State Department to redress its grievances if it perceives problems with the present D.C. zoning process.

The D.C. Zoning Commission, charged with mapping and regulating land uses, is the proper forum for any proposed amendments to the map or process. That avenue has not been pursued by the Department.

II. FEDERAL PREEMPTION

We object to the broad federal preemption language of Sec. 207 of the bill.

We believe the effect of this provision would be to override not only District of Columbia, but other municipalities' and states' laws concerning such things as zoning for consulates; building, plumbing, electrical, and fire codes for consulates; tax codes; police powers and penal codes; historic preservation; motor vehicle registration and traffic laws; consumer protection laws, and others.

This is a "home rule" issue in a much larger sense. As shown in Table 1, foreign missions maintain consulates in 213 U.S. cities and towns. Their laws, as well as D.C. law, would be preempted by this provision.

When, at the discretion of the Secretary of State, the U.S. wishes to confer or deny any of the kinds of "benefits" enumerated above, regardless of the requirements of local or state law, the foreign government would have such benefits conferred or denied.

At the federal level, this preemption may have an effect on enforcement of laws such as the Registration of Foreign Agents Act.

We believe Articles 21 and 41(1) of the Vienna Convention on Diplomatic Relations do not require, nor do they intend, such a sweeping preemption of federal, state, and local law in order to accomplish the purpose of diplomatic reciprocity. We believe the Vienna Convention appealed to all signatory nations to "respect the laws and regulations of the receiving State." Similarly, the receiving States were obligated to observe their own laws in providing for the accommodation of foreign governments.

The legislative history of the Diplomatic Relations Act also makes clear Congressional intent on respect for the laws of the host State by the foreign mission:

> This legislation reflects the intent both of the Vienna Convention on Diplomatic Relations and the Committee on International Relations that the diplomatic community understand clearly that its members are expected to obey the laws and regulations of the United States and of the local jurisdictions in

> which they live and work. The need to provide certain privileges and immunities to insure the effective functioning of a foreign mission should not obscure the duties of guests of the United States not to abuse the hospitality of its citizenry.[1]

We believe our bilateral and other foreign relations can best be accomplished within a democratic framework that assures due process for all parties.

We do not share the view expressed in this Committee Report that the language of the Preemption section would only apply as a negative preemption. Apparently, the Committee bases its view on assurances made in a letter to the Committee Chairman from the Assistant Secretary of State for Administration that a negative preemption was all that was intended.

That is to say, that in situations where a foreign government proposed to locate a consulate in another U.S. city (other than the District of Columbia), or when such consulate proposed to contract for certain goods or services provided by a state or local government, such as motor vehicle registration, police and fire protection, or tax immunity, that only in instances where the Office of Foreign Missions said "no", would its position be final, regardless of local or state law.

Such an assurance notwithstanding, the language of Sec. 207 on federal preemption is not so narrowly drawn.

On the other hand, the State Department maintains the preemption would not overturn a prohibitory local or state law even if the Office of Foreign Missions said "yes". If a negative preemption is all that is intended, we question why the Department has resisted efforts to clarify this in the legislation itself.

Even if the preemption would only be a negative one, there would be great potential for continuing, serious interference with functions which our constitutional democracy has always entrusted to local or state law.

Clearly, the reading of this section is open to many interpretations.

We are sensitive to the expressed concerns of the National League of Cities, the U.S. Conference of Mayors, and several State Attorneys General that the present preemption language is overly broad.

The Maryland Attorney General, for example, has written:

> Clearly, under a plain reading of the bill, this preemption provision could have a significant impact on local government.
>
> Zoning ordinances, building, plumbing, and electrical codes, and police services could be affected.
>
> And nothing is salvaged by the Senate Foreign Relations Committee Report's assertion that Section 207 does not preempt municipal zoning "so long as those requirements do not interfere with the exercise of the Secretary's discretion." S. Rept. No. 97-283, 97th Cong., 1st Sess. (1981)
>
> As we both know, a court is more likely to pay attention to the plain language of Section 207 than to open-ended *dicta* in a Committee report.
>
> In addition to preempting local law, S. 854 could affect important provisions of State law. The State, of course, has

[1] Report 95-526 of the House Committee on International Relations to accompany H.R. 7819, the Diplomatic Relations Act.

promulgated a model building, electrical, and plumbing code for local governments. See Md. Code, Art. 41, S 257J.

In addition, the protections and procedures embodied in Maryland's real property laws and even its Consumer Protection statute could be impacted by S. 854 in its present form.

The California Attorney General, in a letter to the Subcommittee on the preemption section, noted:

> We are concerned that this would allow federal government to override traffic, motor vehicle, even some penal sanctions at the state and local level.
>
> We do not believe this preemption clause is necessary to guarantee diplomatic reciprocity.

The U.S. Conference of Mayors has noted:

> Local governments throughout the United States have always demonstrated a keen concern for the needs of the United States in the conduct of foreign affairs . . .
>
> Local government officials are in unique positions to advise the Secretary on a host of local concerns and how best to effectuate his desired result.
>
> Among other issues, local officials can assist the Secretary in coordinating with zoning and land-use decisions, the adequacy of parking and the availability of all other public services the foreign mission will need.

The Subcommittee's amendment to this section to revise the preemption language would have required federal, state, and municipal governments to give "substantial weight" to the recommendations of the Office of Foreign Missions. It is our view that this revised language, which we intend to offer when this bill comes before the Senate, will ensure that the federal interest will be balanced in decision-making by not only District of Columbia, but other federal, state and municipal governments. At the same time our amendment respects the integrity of those other laws, including the D.C. Home Rule Act.

TABLE 1.—*Cities with consular offices*[1]

Alabama	Mobile, Birmingham, Montgomery.
Alaska	Anchorage, Juneau.
Arizona	Phoenix, Tucson, Scottsdale, Douglas, Nogales.
Arkansas	Little Rock.
California	Los Angeles, San Francisco, San Diego, Atherton, Concord, Culver City, Bakersfield, Berkeley, Burlingame, Beverly Hills, Burbank, Fresno, Hollywood, La Habra, Monterey, Oakland, Palm Springs, Pasadena, Long Beach, Sacramento, Santa Monica, San Mateo, San Jose, Santa Barbara, San Bernardino, San Fernando, San Gabriel, Stanford, Stockton, Calexico.
Colorado	Denver, Boulder.
Connecticut	Bridgeport, Norwich, Hartford, Greenwich, New Haven, Waterbury, Stamford.
Delaware	Wilmington.
Florida	Miami, Tampa, Jacksonville, Orlando, Ft. Lauderdale, Coral Gables, Ft. Pierce, Gainesville, Hollywood, Miami Beach, Panama City, Sarasota, South Miami, West Palm Beach, Lake Worth, Pensacola, Sarasota, Palm Beach, Key Biscayne, St. Petersburg.

Georgia	Atlanta, Savannah.
Hawaii	Honolulu, Kailua.
Idaho	Nampa, Boise.
Illinois	Moline, Belleville, Wheaton, Evanston, Chicago.
Indiana	Mishawaka, East Chicago, Ft. Wayne, Indianapolis, Evansville.
Iowa	Des Moines.
Kansas	Kansas City, Wichita.
Kentucky	Louisville, Lexington.
Louisiana	New Orleans, Baton Rouge, Lake Charles, Metairie, Lafayette.
Maine	Portland.
Maryland	Baltimore, Rockville, Annapolis.
Massachusetts	Boston, Springfield, Gloucester, Fitchburg, Fall River, Marlboro, New Bedford, Worcester.
Michigan	Detroit, Lansing, Grand Rapids, Hancock, Ishpeming.
Minnesota	St. Paul, Minneapolis, Duluth, Rochester.
Mississippi	Jackson, Gulfport.
Missouri	St. Louis, Kansas City.
Montana	Great Falls, Butte, Missoula, Billings.
Nebraska	Omaha, Lincoln.
Nevada	Las Vegas, Reno.
New Hampshire	Manchester.
New Jersey	Newark, Trenton, Orange.
New Mexico	Albuquerque, Santa Fe.
New York	New York City, Albany, Buffalo, Rochester, Yonkers.
North Carolina	Charlotte, Wilmington, Goldsboro, Raleigh.
North Dakota	Bismarck, Fargo.
Ohio	Cleveland, Columbus, Ashtabula, Cincinnati, Oxford, Dayton.
Oklahoma	Oklahoma City, Tulsa.
Oregon	Portland, Astoria, Salem.
Pennsylvania	Philadelphia, Pittsburgh, State College, Wyndmoor, Easton, Harrisburg, Carnegie.
Rhode Island	Providence, Coventry.
South Carolina	Charleston, Lake City, Spartanburg.
South Dakota	Sioux Falls.
Tennessee	Nashville, Memphis.
Texas	Houston, Dallas, Galveston, Corpus Christi, Ft. Worth, Austin, Laredo, San Antonio, Amarillo, Abilene, Brownsville, San Juan, Port Arthur, Del Rio, Eagle Pass, El Paso, Lubbock, McAllen, Presidio, Beaumont, Point Comfort, Prairie View.
Utah	Morgan, Provo, Salt Lake City.
Vermont	Burlington.
Virginia	Norfolk, Richmond, Alexandria, Newport News, Hampton.
Washington	Seattle, Pullman, Spokane.
West Virginia	Wheeling, Clarksburg.
Wisconsin	Milwaukee, Madison, Oshkosh.
Wyoming	Rock Springs.

[1] Source: 1981 Congressional Directory.

III. THE CHANCERY ACT OF 1964

We oppose the repeal of the Chancery Act of 1964.

The Chancery Act of 1964 is a federal law which amended the D.C. zoning law to protect low density residential neighborhoods by prohibiting chanceries in those zones. The act permitted them in all other zones in the city, including medium and high density residential areas.

When a foreign mission proposes to locate a chancery in a medium or high density residential zone, the site and building plan must be reviewed by the D.C. Board of Zoning Adjustment (BZA). This "special exception" process is a common zoning procedure to review normally incompatible land uses in certain zones. Land use theory and zoning practice throughout the United States consider office uses incompatible in residential neighborhoods. Therefore, office uses are not permitted in neighborhoods zoned for residential use, unless they can demonstrate a relationship and compatibility with those neighborhoods.[2]

Since adoption of the Diplomatic Zone in 1978, the BZA has heard 12 chancery cases. Of those, 11 were granted; 1 was denied; 1 has been postponed at the request of the foreign government.

IV. FEDERAL RULEMAKING PROCEDURES

We do not believe the Office of Foreign Missions created within the State Department by this bill should be exempt from federal rulemaking procedures (Title 5, U.S.C.: Sec. 553).

The Administrative Procedures Act of 1946, as amended, contains a categorical exemption from notice-and-comment rulemaking procedures "to the extent that there is involved . . . a military or foreign affairs function of the United States." (5 U.S.C. 553(a)(1)).

The Committee notes that this broad exemption from rulemaking procedures was proposed to be narrowed by the Senate in S. 1080, the Regulatory Reform Act. This Committee in its report accompanying that bill made the following observation:

> While some rules involving military and foreign affairs functions need no public input and may even require an element of secrecy in their development, others present a far less compelling case for exemption.[3]

We believe there is no sufficiently compelling diplomatic reciprocity reason for exempting the Office from federal rulemaking.

Indeed, such an exemption may work against the purposes of the bill.

Implicit in the effective operation of an Office of Foreign Missions is notification to third parties. If the Office wishes to constrain a foreign government from purchasing certain services or goods, it must be able to notify the businesses supplying them that "x" foreign mission is to be traded or contracted with, only on certain terms and conditions or not at all.

The most readily available means of notifying such suppliers is through publication in the Federal Register.

MAJOR D.C. HOME RULE ISSUES

The D.C. Home Rule Act created a Zoning Commission for the District of Columbia composed of five members:

—three Mayoral appointees
—the Director of the National Park Service
—the Architect of the Capitol

[2] Anderson, Robert M., *American Law of Zoning*. Second Ed., Vol. 3.
[3] *Senate Report 97–305* to accompany S. 1080, The Regulatory Reform Act, pp. 16–18.

The Commission is charged with zoning for land-use in the District of Columbia, after holding a public hearing on proposed maps and regulations.

The Home Rule Act further states:

> Zoning maps and regulations, and amendments thereto, shall not be inconsistent with the comprehensive plan for the National Capital . . .

In 1977, the National Capital Planning Commission (NCPC), a 12 member federal agency charged with planning for federal facilities in the National Capital Region, adopted a federal element to the comprehensive plan known as "The Foreign Missions and International Agencies" element. By law, NCPC must adopt such a comprehensive plan for federal facilities in the National Capital Region.

This element of the comprehensive plan for the Nation's capital stated the basic federal policies and general location where foreign missions were to locate their facilities.

The State Department participated in and concurred with the adoption of that plan element.

Pursuant to that plan, the D.C. Zoning Commission in 1978 adopted a Mixed-Use Diplomatic Overlay Zone for the District of Columbia which identified locations where the business offices (chanceries) of foreign missions could locate. Both the State Department and the NCPC participated in that process.

In June of 1981, the NCPC adopted a resolution supporting the present D.C. zoning process for chanceries. The NCPC resolution states:

> The Commission believes that it has not yet been demonstrated to the Commission that there is a problem in the operation of the District zoning process for providing for the location of foreign missions and international agencies. In this context, the Commission reaffirms that the Commission's policy on the location of foreign missions and international agencies is that contained in the "Foreign Missions and International Agencies Element of the Comprehensive Plan for the National Capital" which the Commission adopted on October 6, 1977, as amended, which provides that the proper method of implementation is through the local zoning process, specifically in sections 313.82 and 313.96 which provide that the criteria and plan policies for facilities for foreign missions and international agencies will be implemented through the Zoning Regulations of the District of Columbia and the zoning maps forming a part thereof, an instruction which the Zoning Commission of the District of Columbia subsequently has carried out.

That 1978 rezoning has never been challenged in court, nor has the State Department requested either the NCPC or the D.C. Zoning Commission to amend those documents.

There also exists a D.C. Board of Zoning Adjustment, a five member board, composed of:

—one NCPC representative
—three Mayoral appointees
—one rotating member of the D.C. Zoning Commission

The Board hears and decides applications for special exceptions to the zoning regulations of the District of Columbia.

Because chanceries are office uses of diplomatic missions, when they propose to locate in residential-zoned districts, their site and building plans are subject to review by the BZA, a normal zoning procedure throughout the United States.

In addition, all special exception zoning cases for chancery use are reviewed and commented upon to the BZA by the NCPC for its federal interest impact.

The American Law of Zoning, a basic text on the subject, explains the special exception process:

> Special permit procedures are a product of the need for flexibility in the administration of the zoning regulations . . .
>
> Nearly all zoning ordinances make some use of special-permit procedures. Most ordinances impose a broad division of land uses and, in addition, provide that specified uses may be established or maintained in named districts, only pursuant to a special permit issued with the approval of the Board of Adjustment. These regulations empower the boards to issue permits after notice, hearing, and specified findings. They detail certain standards which must be met before a permit may be issued; commonly, they authorize or require the board to impose conditions designed to protect abutting landowners and perserve the character of the neighborhood. The special permit technique is employed to control uses which are regarded as especially troublesome, and to soften the impact of certain uses upon areas where they will be incompatible unless conditioned in a manner suitable to a particular location . . .
>
> Parking lots, drive-in theaters, rock festivals, some industrial uses, and funeral homes commonly are required to obtain special permits . . .
>
> These uses may be subjected to conditions which protect the neighborhood from the noise and traffic congestion which commonly attend such uses. The special permit requirement has been imposed upon medical offices, dormitories, stables, animal hospitals, mobile home parks, quarries, junkyards, and a variety of unlike uses which pose a miscellany of threats to their neighbors.[4]

Since adoption of the Diplomatic Zone in 1978, the BZA has had before it 12 chancery applications. Eleven have been granted and one was denied. One other case has been postponed at the request of the foreign government.

It should be noted there is no requirement that chanceries locate only in the District of Columbia. Foreign governments have complied with the State Department's policy to locate in the District however, out of respect for the host State's wishes and also for their own self-interest: closer proximity to U.S. agencies and other foreign governments with which they do business and better Secret Service protection and response time.

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[4] *American Law of Zoning*, Second Ed., Vol. 3, Robert M. Anderson, pp. 359–360; pp. 366–367.

MAJOR ELEMENTS OF DIPLOMATIC RECIPROCITY

The principal international agreements relating to the conduct of international relations are the 1961 Vienna Convention on Diplomatic Relations and the 1963 Vienna Convention on Consular Relations.

Article 21(1) of the Vienna Convention on Diplomatic Relations provides that:

> The receiving State shall either facilitate the acquisition on its territory, *in accordance with its laws* by the sending State of premises necessary for its mission or assist the latter in obtaining accommodation in some other way. (emphasis added)

Article 41(1) of the Vienna Convention on Diplomatic Relations and Article 55(1) of the Vienna Convention on Consular Relations, state in identical language:

> Without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving State . . .

Article 30(1) of the Vienna Convention on Consular Relations provides that:

> The receiving State shall either facilitate the acquisition on its territory, *in accordance with its laws and regulations* by the sending State of premises necessary for its consular post or assist the latter in obtaining accommodation in some other way. (emphasis added)

We are of the view that the conduct of diplomatic relations should respect existing laws and regulations of the host nation. This observation of the host country's laws includes existing municipal zoning law and regulations.

SUBCOMMITTEE HEARING

The Subcommittee on Governmental Efficiency and the District of Columbia held a hearing on S. 854 on January 25, 1982.

Witnesses were: The Honorable Walter Fauntroy, Delegate from the District of Columbia; the Honorable Marion S. Barry, Jr., Mayor of the District of Columbia; the Honorable Thomas M. Tracy, Assistant Secretary for Administration, Department of State, accompanied by Mr. Walter F. Weiss, Deputy Assistanct Secretary for Administration and Mr. Harold S. Burman, Office of the Legal Advisory; Mr. Harvey S. Pryor, Chief, Uniformed Division, U.S. Secret Service; Dr. Walter B. Lewis, Chairman, D.C. Zoning Commission, accompanied by Mr. Charles R. Norris, Chairman of the Board of Zoning Adjustment and Mr. Steven E. Sher, Executive Director of the D.C. Zoning Secretariat; Dr. Daniel R. Mandelker, Stamper Professor of Law, Washington University, St. Louis; Mr. John Lawrence Hargrove, Citizens Planning Coalition of the District of Columbia and the Ad Hoc Committee on the Foreign Missions Bill.

The Subcommittee heard from several witnesses representing the District of Columbia that the existing zoning process for locating foreign mission chanceries was working smoothly and that careful consideration was given by both bodies to the viewpoint of the U.S. De-

partment of State. It was also pointed out that both D.C. zoning authorities had federal membership, unlike the membership of other municipalities' zoning authorities, which are entirely local in composition.

The Subcommittee learned that in 1977 and 1978 the National Capital Planning Commission adopted a Foreign Missions and International Agencies federal element of the comprehensive plan. That element set out the general locations and policies to be followed by the D.C. Zoning Commission in subsequently adopting the Mixed Use Diplomatic Overlay Zone.

Dr. Mandelker raised serious questions about the proposed federally-dominated Foreign Missions Commission and the criteria it was to use in rezoning the District of Columbia for chancery use. Because of the vague language of the proposed criteria, Dr. Mandelker predicted extensive litigation would ensue to determine their meaning.

In questioning the State Department representatives about the nature of the problem the Department was seeking to address in the creation of a new special zoning agency, the witnesses were unable to cite more than two specific cases since 1978 where a foreign government was denied its application to locate chancery space.

Questions about due process protections were raised by Subcommittee members about the proposed Foreign Missions Commission. When the Subcommittee pointed out that the five member D.C. Zoning Commission has two federal members, one of whom is the Architect of the Capitol, the State Department representative stated that those federal members do no adequately reflect the views of the Department of State. The Department was unable to explain why it did not propose placing itself on the proposed new commission rather than the Defense Department and NCPC.

The Subcommittee received written testimony from the Honorable Stewart B. McKinney, Ranking Minority Member of the House Committee on the District of Columbia.

The Subcommittee also received written testimony from the D.C. League of Women Voters, the Washington Board of Trade, and the Chairman of the D.C. City Council urging deletion from the bill of the proposed federally-dominated Foreign Missions Commission (Sec. 206) as well as deletion of the proposed repeal of The Chancery Act of 1964.

On the issue of federal preemption (Sec. 207), the Subcommittee received written correspondence from the U.S. Conference of Mayors, the National League of Cities, the California and Maryland Attorneys General expressing concerns that the language was overly broad and could have an adverse impact on the workings of state and local governments.

The Subcommittee also raised questions about how the proposed Office of Foreign Missions within the State Department would enforce its conferring or denying of benefits to foreign governments. The Department witness responded there would be notification to businesses who supplied goods or services to foreign missions, as well as to municipal, state, and other federal government agencies. The witness also responded that the U.S. may also declare a member of a foreign mission *persona non grata* if the mission violated the provisions of its benefits.

The State Department witness testified that the security of foreign missions has become a matter of increasing concern to the Department

and that one of the efforts the Department is making is to cluster foreign missions more effectively in the Nation's Capital.

The Subcommittee pointed out, however, that if that were the Department's intentions along with gaining greater control over the terms and conditions for the location of foreign mission chanceries, the bill, as proposed, would work against that purpose. The bill, as reported by the Senate Foreign Relations Committee, would expand the areas of the District of Columbia where chanceries could locate as a matter-of-right. Such a rezoning would further enlarge the areas where a foreign government could locate without a review of its site and building plans. Thus, there would be less control over the location of chanceries under S. 854 as reported.

Of particular concern to the Subcommittee was the testimony of the U.S. Secret Service Uniformed Division concerning its involvement in the development of the Foreign Missions federal element of the comprehensive plan; in the development of the Diplomatic Overlay Zone; in the daily process of foreign governments seeking to locate facilities; and in the drafting of S. 854.

The Subcommittee was told that the Uniformed Division was virtually unaware of the development by NCPC and the State Department of a Foreign Missions and International Agencies element of the plan. When its advice was sought by NCPC one meeting was held with NCPC staff on November 18, 1976 concerning the general operations and protection concerns which the Secret Service has for foreign missions. At no point, did the Secret Service offer specific comments on the proposed map of locations for foreign missions included in the plan element.

The Secret Service testified that it was not asked, nor did it comment on the Diplomatic Overlay zone adopted by the D.C. Zoning Commission. Nor does it participate in chancery cases coming before the Board of Zoning Adjustment.

The witness testified that the Secret Service was not consulted during the drafting of S. 854 for its security and protection concerns.

It also became clear to the Subcommittee that while there may be some contact between the State Department and Intelligence Division of the Secret Service on the location and configuration of facilities for foreign governments, the Uniformed Division is usually the last to know of such plans. Better intergovernmental communication and cooperation are essential at an early stage in the foreign mission planning and building process if the security and protection concerns of the Secret Service are to be factored into the building's location and design.

Section 204 of the bill restates the authority of the U.S. Secret Service to protect foreign mission property.

We are concerned about the apparent poor intergovernmental cooperation between the Department of State and the Secret Service, particularly the Uniformed Division, concerning the location and relocation of chancery facilities in the District.

The Secret Service is the federal agency charged with protecting foreign governments' property in the U.S. Their concerns for providing such security must be factored into locational decisions very early in the process.

We believe the Department of State and the Office of Foreign Missions should promptly inform the Secret Service of the intentions

of foreign governments for chancery space, once those intentions are made known to the Department.

We believe the Office of Foreign Missions established in Section 203 should work closely with the Secret Service to assure that foreign missions are adequately protected and that the security concerns of the Secret Service about chancery locations be taken into account at an early point in the process of determining terms or conditions for a foreign government.

We are also concerned about the level of intergovernmental coordination particularly with regard to the locating of foreign mission chanceries in the District of Columbia and the locating of consulates in cities throughout the United States.

Foreign governments maintain consulates in every State of the Union including 213 cities.

In the case of the D.C. Board of Zoning Adjustment and the D.C. Zoning Commission, we strongly recommend that when cases involving a foreign government come before the BZA or Zoning Commission, that the Board or Commission notify and seek comments from the Office of Foreign Missions, the U.S. Secret Service, the D.C. Metropolitan Police Department, and the D.C. Fire Department. These four agencies are directly involved in the protection and security of such buildings and should be consulted prior to a final zoning decision.

We believe that by requiring not only District of Columbia, but other federal, state, and municipal governments to give "substantial weight" to the recommendations of the Office of Foreign Missions, the federal interest will be balanced in reaching decisions involving foreign governments while at the same time respecting the integrity of other federal, state, and local laws, including the D.C. Home Rule Act.

The Subcommittee on January 25, 1982, marked up the bill and unanimously agreed to the following four amendments:

1. Deletion of Sec. 206, "Foreign Missions Commission."
2. Revision of Sec. 207, "Preemption."
3. Deletion of the repeal of The Chancery Act of 1964.
4. Deletion of the exemption from federal rulemaking procedures for the State Department.

Voting for the amendments were Senators Mathias, Eagleton, and Rudman.

In sum, we believe there are substantial reasons for concern about S. 854 as presently drafted. We have tried to set out our views in a concise, comprehensive manner, yet we recognize that this is a complicated, perhaps even arcane, subject.

In the final analysis, however, the issue facing the Senate is this: should the need for a more effective enforcement mechanism for diplomatic reciprocity be used as the basis for an unjustified and unprecedented intrusion into the authority vested in state and local governments, including the District of Columbia?

Simply put, we do not believe it should.

CHARLES MCC. MATHIAS, JR.
THOMAS F. EAGLETON.
WARREN RUDMAN.
CARL LEVIN.
JIM SASSER.

X. ADDITIONAL VIEWS OF MR. DURENBERGER

Although I generally support the provisions of S. 854, I am concerned about Section 207 of the Foreign Missions Act, and the way that it would affect state and local government discretion in the location of foreign missions within their respective jurisdictions.

Section 207 of the Act, which contains a preemption clause, raises issues concerning the authority of federal, state and local governments to determine the location of foreign missions in municipalities across the nation. The immediate impact of this preemption clause might be interpreted to preempt all state and local land use regulations regarding the location of foreign missions.

While the area of foreign affairs is properly a federal role, the area of land use has been traditionally within state and local control. The Act reported from this Committee purports to restore balance to foreign relations by granting the United States more reciprocity in the conferring of benefits and privileges to foreign missions. I do not believe, however, that the preemption of state and local zoning ordinances is a necessary means to the accomplishment of this worthwhile end.

Rather, a review of the Act indicates that adequate authority to confer or deny benefits to foreign missions has been delegated to the Department of State through a newly created Office of Foreign Missions. The issue, thus, becomes one of how extensive the State Department's authority should be after it has conferred or denied a benefit to a foreign mission in a particular locality.

The Act resolves this issue for the District of Columbia. In all other jurisdictions, state and local zoning processes and regulations should remain unaffected by the proper exercise of federal authority to confer or deny foreign mission benefits.

It is clear that there must be a balance of the federal, state and local interests affected. Discretion may be granted to the Secretary of State or to the Director of the Office of Foreign Missions to deny a benefit to a foreign mission. However, in the case where a determination has been made to confer a benefit to a foreign mission, state and local land use regulations should control. Ultimate decisions regarding the location of foreign missions must be made by local zoning boards where citizens of a municipality can be represented, and their interests protected.

Despite my reservations about the overreaching effects of Section 207, I want to express my support for the general principles embodied in this legislation. I am pleased to see S. 854 reported favorably by the Committee on Governmental Affairs, and I look forward to an opportunity to correct the deficiencies of Sec. 207 in the floor debate.

DAVE DURENBERGER.

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